

COMMUNICATION FOR CONFLICT TRANSFORMATION

*An assessment of arbitration procedures between aggrieved  
educators and the KZN Education Department*

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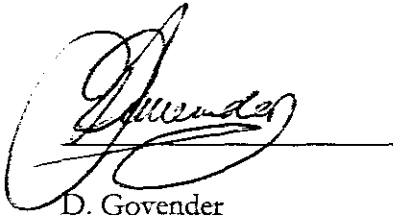
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## ETHICAL STATEMENT BY RESEARCHER

With the signature below I, Dayalan Govender, hereby declare that the work I present in this thesis is based on my own research and that I have not submitted this thesis to any other institution of higher education to obtain an academic qualification.

A handwritten signature in black ink, appearing to read 'D. Govender', is written over a horizontal line. The signature is stylized and cursive.

D. Govender

Date: 10 February 2004

## ABSTRACT

University of Zululand (Durban Campus)

### COMMUNICATION FOR CONFLICT TRANSFORMATION

*An assessment of arbitration procedures between aggrieved  
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This dissertation uses a combination of qualitative and quantitative research methodologies to present an objective analysis of conflict between aggrieved educators and their employer, the KwaZulu-Natal (KZN) Department of Education, set against current theories of how narrative analysis, informed by semantic roles analysis, can be used according to the principles of organisational communication to discern underlying causes of conflict, and current approaches to conflict transformation.

The major findings of this study are that conflict is endemic at all hierarchic levels of the KZN Department of Education, that intermediate forms of dispute resolution are not working effectively, with the consequence that a high number of disputes are referred for arbitration, and finally that arbitrators are performing their duties effectively in terms of the dispute resolution procedures of the Education Labour Relations Council (ELRC).

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## *Chapter 1*

### STATEMENT OF PROBLEMS AND RESEARCH PROCEDURES

#### **INTRODUCTION**

In this chapter the researcher identifies the general problem that prompted this investigation, namely conflict between the KZN Department of Education (KZN DoE) and aggrieved educators among its employees. The researcher then decomposes this general problem into a number of sub-problems, and thereafter states which sub-problems will be resolved in this study. Having identified the problems, the researcher then sets three objectives relating to the solution of the problem. In order to meet these objectives the researcher poses a number of critical questions that will inform the design of the research procedure that has to be conducted in order to meet the stated objectives.

#### **THE SOCIO-CULTURAL PERSPECTIVE OFF THIS STUDY**

South Africa's previous system of education was based on racial inequality and segregation. Since the democratic transition in 1994 South African society has embarked on a process of reinvention that includes the reconfiguring of the country's education system. The objectives of education reform are to redress past injustices in education provision, provide education of a progressively high quality for all learners and in so doing to lay a strong foundation for the development of all our people's talents and capabilities, advance democratic transformation of society, combat racism and sexism and all other forms of discrimination and intolerance, contribute to the eradication of poverty, promote economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators and promote their acceptance of responsibility for the organization, governance and

funding of schools in partnership with the state which has been and still is within stormy waters. This is so because of the negotiated idealistic expectations in education legislation and real inequality of contextual factors at the points of education delivery. The added burden is the communication problems experienced within these contexts.

#### **STATEMENT OF PROBLEMS**

Relating to the socio-cultural perspective stated above, according to the preamble of the South African Schools Act (SASA), 1996 the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation. This country requires a new national system for schools which will redress past injustices in education provision, provide education of a progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance democratic transformation of society, combat racism and sexism and all other forms of discrimination and intolerance, contribute to the eradication of poverty and economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators and promote their acceptance of responsibility for the organization, governance and funding of schools in partnership with the state.

The experience of the people during that era of South Africa with special reference to education determines how they react to change and how this change is communicated. Within the context of the KZN Education Department and educators the researcher investigates why conflict is endemic in this department from the Chief Executive Officer right down to employees at a school where the core business of education is the focus. Conflict with the

department of education has not even escaped the researcher who during his study experienced the effect of conflict and individuals' responses within a social contract.

Mersham and Skinner (2001) note two interesting aspects of organizational behaviour, namely (1) organizational communication in the new millennium exhibits a radical change of focus that has resulted in new conceptualisation of organization and (2) the role organizational communication plays in organizational functioning.

The "single-minded organizational concept" in which management knows best has been replaced with a multi-minded approach in which all organization members are valued for their ability to contribute to the effective functioning of the organization. Referring to Verwey (1998:376), Mersham and Skinner argue that the emphasis on prescribing appropriate communication behaviour to solve management problems has been replaced by describing how communication values and behaviours influence individual and organizational behaviour.

Increasingly, management focus has shifted towards a competitive positioning in the market place and adaptation to the increase in, and acceleration of change through to the management of innovation. Today, organizations all over the world, but even more so in post-apartheid South Africa, have to cope with many dramatic changes, ranging from fundamental restructuring to revolutionary shifts in traditional values (Verwey 1998:376).

The communication relationships in South Africa since our first democratic election and especially within the education system is increasingly becoming complex and complicated as the learners, educators and parents begin to lay claim to their rights. Conflict in these circumstances become inevitable and escalates affecting education transformation.

There are many reasons for the conflict and factors that contribute to the growing conflict within South Africa. Since the struggle against apartheid in South Africa, educators, learners and parents were in the forefront of the struggle. This led to conflict in education. While the democracy of South Africa has given rise to the internationally envied South African Constitution, it has given birth to a range of snowballing conflicts in South African Education. The social contract has become a vicious cycle beginning with “The bill of rights”. The learner’s right to education, the parent’s right to quality public education and the rights of educators as employees or workers.

As this social contract becomes implemented conflict also emerges with educators, school managers and other stakeholders who are unaware of their rights and responsibilities in the social contract. The role of School Governing Bodies, Representative Council of Learners in terms of SASA, Government Gazette, 15 November 1996 and educators and their educator organizations in terms of the Labour Relations Act and Educators Employment Act 76 of 1995 has contributed too many more conflict situations. The entire education department from the Chief Executive Officer (CEO) to learners at school is wracked with conflict. This general problem can be restated as three interrelated sub-problems.

1. The researcher focuses on how we can transform conflict in education to effect education transformation.
2. This research overviews the conflict between the Educator Organizations, acting on behalf of aggrieved educators, and the KZN Department of Education (DoE), identifies the root causes of conflict in education in KZN and their effect on educational transformation.

3. It assesses the arbitration procedures which are being used in education to resolve disputes.

## **OBJECTIVES**

This research project sets out:

1. To give an accurate description of the arbitration procedures between the teacher unions and the KZN DoE;
2. To develop an appropriate model of arbitration procedures for transforming the conflict in the public educational sector, rather than mediating it and managing it as in the present practice.

## **CRITICAL QUESTIONS**

The critical questions that follow relate to how the research procedure needs to be designed to meet the before stated objectives:

1. What is the difference between arbitration as conflict management and arbitration as conflict transformation?
2. What are the essential characteristics of conflict transformation?
3. What are the root causes of conflict in the public educational sector?
4. At what levels of organization structure are conflicts most prevalent in the public sector?
5. What are the effects of the outcomes or arbitration procedures on education transformation?

## **RESEARCH DESIGN**

Having considered the above five critical questions, the researcher will use a qualitative procedure consisting of observation of meetings and arbitrations and semi-structured interviews with teacher organisation officials involved in arbitration in KwaZulu-Natal, the results of which the researcher will interpret against current international research on conflict transformation to develop an appropriate model for reconceptualizing the arbitration in education as a process of conflict transformation rather than a process of conflict mediation and management.

### **Research procedures**

During a planning and brainstorming session with the researcher's promoter we identified that we needed to obtain permission from the educator organizations and the KZN DoE so that observation of meetings could be recorded on tape and to sit in and observe meetings and arbitrations.

### **Obtaining permissions**

The obtaining of permission will facilitate the observation first hand and to analyze the narratives within the context of parties negotiating and addressing conflict within the education sector. The secretary of the bargaining council, namely the Education Labour Relations Council (ELRC), the KZN Chamber hereafter will be referred to as the Chamber, will be contacted to obtain permission from the parties to the chamber to observe their meetings. The obtaining of permission will be done via a letter to the different parties and as well to the Chamber. The research required the observation of meetings of the teacher organizations with



their constituencies and the department of education with their constituencies and the parties together in the Chamber.

### **Promoter's letters of facilitation**

The researcher's promoter, Prof. R. M. Klopper, will write letters of facilitation to the KZN DoE and Teacher Organisations, namely the South African Democratic Teacher's Union (SADTU), Natal Teacher's Union (NATU), Association of Professional Educators KZN (APEK) and Die Suid Afrikaanse Onderwysers Unie' (SAOU).

### **Research instruments**

#### ***Observation***

During the initial consultations between the researcher and his promoter they jointly developed an observation schedule to standardise the procedure for observing chamber meetings, union meetings and arbitration proceedings.

#### ***Interview schedule***

A semi-structured interview schedule was designed with open-ended questions that contained personal particulars of the interviewee, questions that would encourage honest and transparent answers to facilitate data collection.

#### **Literature review**

An initial parameter-setting literature review was conducted, consisting of an electronic NEXUS search to establish what research on the topic is being conducted at South African institutions of higher education. This was followed by a SABINET search to identify books available for interlending from other libraries. Finally, an Internet search will be conducted for reputable international agencies and institutions that specialise in conflict resolution.

## **Fieldwork**

After developing an observation schedule fieldwork with observation of meetings of the department of education, teacher organizations, the education labour relations chamber and arbitration will be conducted.

## **Combined modes of research**

While researchers usually choose between qualitative and quantitative modes of research, an analysis of arbitration proceedings requires the combination of both modes. This study will therefore implement a combination of qualitative and quantitative research.

## ***Qualitative analysis***

In this dissertation the researcher will employ two modes of subjective analysis namely:

1. The storytelling mode of analysis developed by Boje (2001), and
2. The concept matrix mode of analysis employed by Rugbeer (2004)

## ***Quantitative analysis***

For the quantitative part of the analysis the statistical program SPSS 11.5 will be used to encode, analyse and visually represent the results of this study.

## ***Combined mode of analysis***

In instances where interviewees responded in some length to open-ended questions in the interview the researcher therefore, had to analyse open-ended responses. The researcher will use concept matrices (see Rugbeer (2004) to evaluate data that would help to visualize categorical data so that an increasingly fine grained analysis is conducted in conjunction with the quantitative analysis done in SPSS.

## **CONCLUSION**

In this chapter the researcher identified the problems regarding conflict between the KZN DoE and aggrieved educators. The researcher stated the objectives of this project and outlined the research procedure to be followed in order to meet those objectives. In the chapter that follows, the researcher will review current studies of conflict in general.

## *Chapter 2*

### APPROACHES TO THE STUDY OF CONFLICT

#### **INTRODUCTION**

In the previous chapter the researcher posed critical questions that prompted this research project, and presented the research methodology that the researcher will employ to answer them. In this chapter the researcher will discuss how we can transform conflict in education to effect education transformation. This research overviews the conflict between the Educator Organizations and the Department of Education to identify the root causes of conflict in education in KZN and its effects on education transformation. It assesses the arbitration procedures which are being used in education to resolve disputes.

This study focuses on the KZN DoE and the different teacher organization as constituencies and each constituency has feedback loops of communication. The communication problem is identified when the representatives come back to their constituents with a proposal which seems reasonable to them, because they understand the constraints under which it was developed and had contributed to it, but the constituents may react differently, because they don't have the understanding of the process or the substance of the representatives' ongoing discussions.

The researcher will begin by defining conflict and how it is currently being managed. We will identify root causes of conflict and its effects on education transformation and the process of arbitration and its success in resolving disputes.

## THE CONCEPT “CONFLICT”

According to the Oxford Dictionary (1992) “Conflict” is defined as (1) **a** a state of opposition or hostilities, **b**. fight or struggle.

Microsoft Encarta (1998) Encyclopaedia Dictionary defines conflict (1) Prolonged fighting. (2) Disharmony between incompatible antithetical persons, ideas or interests. (3) To be in opposition or to differ.

The Oxford Dictionary (1992) defines “Dispute” (1) **a** debate, argument **b** quarrel (2) a discussion, esp. heatedly (dispute whether it is true) (3) questioning of truth or correctness or validity of a statement, alleged fact (4) contention for, strive to win (5) resistance / (1) a controversy; debate (2) quarrel and a (3) quarrel between management and employees especially one leading to industrial action.

According to Oxford Dictionary (1992) “grievance” relates to a real or fancied cause for complaint.

The Oxford Dictionary (1992) defines “arbitration” as the settlement of a dispute by and through a arbitrator.

The above definitions summarize the term conflict, dispute, grievance and arbitration for most people and when in situations of oppositions, hostilities, struggles, prolonged fighting, disharmony between incompatible antithetical persons, ideas or interests or to be in opposition and differ, cause various reactions and is most frequently hidden from or results in hostile confrontations resulting in destruction of resources and or life.

Wela (2001)'s gives two reasons for the coming about of conflict within a state, or intrastate conflict. The first one is the mobilization of people according to their race, religion, culture, language, etc. Identity-based conflict is very persistent and not easily solved through negotiation. The second reason for conflict is that the resources available are not equitably shared. When both these factors are present we get what is called "deep-rooted conflict."

The Education system in South Africa prior to the democratisation of our country provided education on racial, ethnic, language, religious and gender discrimination grounds. The problem of partial or uneven distribution of resources was caused by the apartheid political order, which divided the population into racial groups and treated them accordingly. This led to the disadvantaged masses in South Africa to be in conflict with the apartheid government to obtain equal opportunity to quality education. Now a decade into the democracy there is still a large disparity in the quality of resources, which is now a snowballing area of conflict. This conflict is emerging as teachers, find themselves in the midst of unequal working conditions, unfair labour practices, violations on employee rights, inconsistent application of education legislation, and procedures and practices of education legislation, resulting in disputes between the teacher organization and the KZN Education Department.

#### **THE ANALYTIC FRAMEWORK OF THE COLORADO CONFLICT RESEARCH CONSORTIUM**

In this chapter the researcher relies on the lucid and concisely presented insights about conflict transformation from *The Conflict Research Consortium* (CRC) of the University of Colorado, USA (see <http://www.Colorado.EDU/conflict/peace/problem/misinter.htm>) because their proposals fit the communication problems that exist in the KZN education system like a hand fits into a well tailored glove. The CRC presents the following framework for determining and treating conflict problems in order to transform conflict:

### **The CRC's list of conflict problems**

The following list of eleven conflict problems that the CRC identifies will be summarised later in this chapter:

1. Misinterpretation of Communication
2. Language differences
3. Constituent Communication Problems
4. Secrecy and Deception
5. Inflammatory Media
6. Inflammatory Statements
7. Poor Listening Skills
8. Misinterpreted Motives
9. Crisis Communication
10. New, Poorly Informed Participants
11. Inaccurate and Overly Hostile Stereotypes

#### ***Misinterpretation of communication***

In KZN the National Education Policy Act 1996, national legislation, gives the province autonomy in how education is managed within the framework of the national education legislation. However, the national legislation gives expression to the ideology of the ruling

party, which is the African National Congress. Up until 2003 the provincial legislature was however dominated by the Inkatha Freedom Party who is an opposition party who was and is not eager to give credence to all aspects of the national legislation.

The CRC points out that social conflict often involve some misunderstanding. Conflict parties communicate by what they say (or do not say) and how they behave toward one another. Even normal interaction may involve faulty communication, but conflict seems to worsen the problem. The higher the level of conflict, the more costly misunderstandings may be.

All communication has two parties: a sender and a receiver. The sender has a message s/he intends to transmit, and s/he puts into words what s/he is thinking. But many things can intervene to prevent the intended message from being received.

If the communication is verbal, tone of voice can influence interpretation. The bosses' words "hey, I noticed you were taking an especially long break this morning," could be interpreted as an attack if he said that in a disapproving tone; while the comment might be seen as a minor reminder about office rules, if it was said in a friendly way. If the employee had a problem concerning the long break, the comment might have even been a friendly inquiry about what was happening and whether the employee needed any help. Here, tone of voice as well as situational and relationship factors would influence the interpretation of the message.

Nonverbal cues also are important. Is the sender's posture open and friendly, or closed and cold? Is her facial expression friendly or accusatory? All of these factors influence how the same words will be received.



In addition to how the message is sent many additional factors determine how the message is interpreted by the receiver. All new information we learn is compared with the knowledge we already have. If it confirms what we already know, we will likely receive the new information accurately, though we may pay little attention to it. If it disputes our previous assumptions or interpretation of the situation, we may distort it in our minds so that it is made to fit our world view, or we may dismiss the information as deceptive, misguided, or simply wrong.

If the message is ambiguous, the receiver is especially likely to clarify it for her/himself in a way which corresponds with her/his expectations. For example, if two people are involved in an escalated conflict, and they each assume that the other is going to be aggressive and hostile, then any ambiguous message will be interpreted as aggressive and hostile, even if it was not intended to be that way at all. Our expectations work as blinders or filters that distort what we see so that it fits our preconceived images of the world.

An analogy can be made with the science experiment done to test people's interpretation of visual cues. When people were given eye-glasses which turned the world upside down, they had to suffer with upside down images for a week or two. But after that, their brains learned to turn the images back over again, so they were seeing things right side up. The same thing happens when we hear something we "know" is wrong. Our brain "fixes" it.

Given our tendency to hear what we expect to hear, it is very easy for people in conflict to misunderstand each other. Communication is already likely to be strained, and people will, most likely, want to hide the truth to some extent. Thus the potential for misperceptions and misunderstandings is high, which can make conflict management or resolution more difficult

### *Language differences*

South Africa has 11 official languages and these languages differ geographically and the medium used increases communication problems. The English language is used as the medium of communication and is communicated in the main in this medium.

The CRC states that language differences greatly increase communication problems, even if the speakers have some knowledge of the others' language. Language is so much more than words; it is also a way of thinking and seeing and defining the world. As a result, accurate translation, especially of abstract ideas, is very difficult. When this problem is added to all the other problems with communication during conflicts, situations can get very difficult to manage, and the chances for misunderstanding are extremely high.

(<http://www.Colorado.EDU/conflict/peace/problem/langdif.htm>, accessed on 04 March 2003 15H42)

### *Constituent communication problems*

The Conflict Research Consortium, University of Colorado, USA posits that most dialogue, negotiation, and consensus processes involve a relatively small number of people, who may be acting on behalf of a much larger constituency. As the small group works together over time, they often develop a level of understanding, trust, and an image of the problem that differs considerably from their constituents, who have not been involved in the small group process.

Then, when the representatives come back to their constituents with a proposal which seems reasonable to them (as they understand the constraints under which it was developed), the constituents may react very differently, because they don't have the understanding of the process or the substance of the ongoing discussions. (Some scholars refer to this as the "re-

entry problem," negotiators or dialogue participants must "re-enter" their old groups, but when they do so they find they are not welcome, but rather are shunned, and their work denounced, not applauded.)

One of the causes of this problem is inadequate communication with the constituent groups as the small group process is going on. Although it is impossible to have everyone involved in the negotiation or dialogue, if the results of the process are to be transferred to the larger population, the representatives should frequently check back with their constituencies to make sure they understand what is happening in the small group process and, in the case of negotiation, feel as if they have adequate input to it. Without frequent communication with constituents, the risk of a re-entry problem and the rejection of any ultimate agreement increases significantly.

(<http://www.Colorado.EDU/conflict/peace/problem/constcom.htm>, accessed on 04 March 2003 16h04)

### *Secrecy and deception*

The CRC notes that confrontations tend to be more constructive if the parties have an accurate image of the interests, positions, and actions of the other parties. Actions based on inaccurate understandings of the situation are much less likely to achieve their desired objectives and much more likely to unnecessarily antagonize opponents. Nevertheless, distorting an opponents' image of the situation can often produce significant tactical advantages. Such distortions can arise from secrets as well as spreading deceptive information.

(<http://www.Colorado.EDU/conflict/peace/problem/secrecy.htm>, accessed on 04 March 2003 15h51)

In KZN the political rivalry between the African National Congress (ANC) and The Inkatha Freedom Party (IFP) results in the IFP using secrecy and deception to gain political power and ultimately control in an education legislative provision for autonomy.

### *Inflammatory media*

The CRC makes the point that although the media usually claim that their purpose is to inform the public about public events, they often do so in an inflammatory way. Part of this is due to differing interests. In countries with a free press, journalists want to write pieces that get people's attention (so they can get more readers, listeners, and/or viewers). To do this, they often focus on extreme events and negative stories, because those generate more interests than do stories about cooperation or peace. Although this bias does not occur in countries where the government controls the press, in those nations, the press usually gives the government views of issues, which may be highly one-sided and inflammatory as well.

In addition, many reporters simply do not understand enough about conflict dynamics in general or the particular issues or people that they are writing about to avoid making misstatements or statements that make the situation worse, rather than better. Further, they usually work on tight deadlines, interviewing as many people as they can in a few hours or days. Then they have to write their story and move on. This does not give them time to develop the deep understanding of an issue that is necessary to analyse it accurately and clearly for the public. As a result, media coverage of a brewing conflict which is intended to clarify the problem can actually obscure and escalate it.

This becomes an even greater problem when negotiations are occurring, as people bargain very differently if they know they are being watched than they do if the negotiations are private. In

private negotiations people can brainstorm, raise and explore all sorts of new, creative ways to define the problem and generate solutions. If they are being watched, they tend to stick much more closely to their standard positions, for fear of alarming their constituencies. Negotiators will often make speeches that are designed more to appeal to the outside audience than the people at the table. For this reason, mediators usually prefer that an audience be present although this can at times be difficult, especially in democratic societies where the press publicizes most decision-making processes.

(<http://www.Colorado.EDU/conflict/peace/problem/uwpublic.htm>, accessed on 04 March 2003 15h57)

### *Inflammatory statements*

According to the CRC inflammatory statements and personal attacks are two of the most common causes of conflict escalation. When people attack other people verbally, those attacked are likely to get especially defensive or angry much more than they would have, had their opponents kept their statements impersonal and focused on the problem. For example, when people are told they, personally, are at fault for a particular situation, or that they are evil or stupid for believing something or advocating a particular action, the person attacked is likely to respond in a very negative way. They are much more likely to dig in their heels and stand firm, refusing to listen to the other side's arguments or consider making compromises or concessions. They will just reject the other side as unreasonable, and ignore anything they have to say.

When situations are exaggerated or emotional, negative statements are made about the opponent for the purpose of arousing support for one's own cause, the result is likely to

intensify for both sides. Those making the inflammatory statements will not only increase support for their own side, they are also likely to increase their opponent's support as well, as people who realize that the statements are an unfair exaggeration will side with the party being accused, rather than the accuser. The result will not be a change in the relative support of one's own group (or in one's power relative to the other side), but rather an overall escalation of the conflict, which will make it more difficult for both sides to get what they need.

(<http://www.Colorado.EDU/conflict/peace/problem/inflame.htm>, accessed on 04 March 2003 15h55)

### *Poor listening skills*

The CRC makes the point that many people are poor listeners, even in everyday life. They tend to listen and think about something else at the same time. This happens even more frequently when people are in conflict. Rather than carefully attending to what the other person has said, many people think about their response while the other person is talking.

In addition, they tend to interpret things to coincide with the views that they already have. For this reason, they assume they know and understand what other people are saying, because they assume that it corresponds with their own expectations about what the person is likely to say or "should" be saying. Since people in conflict tend to develop hostile and distrustful images of the other, their interpretation of things the other side says or does is also likely to be hostile and distrustful. Ambiguous messages are interpreted in the worst possible way; even clear messages tend to be ignored or disregarded, if they are inconsistent with one's original negative view.

Such poor listening makes good communication almost impossible. No matter how much care one person or group takes to communicate their concerns, values, interests, or needs in a fair, clear, unthreatening way, if the listener is not willing to receive that information in that way, the communication will fail.

(<http://www.Colorado.EDU/conflict/peace/problem/poorlist.htm>, accessed on 04 March 2003 15h49)

### ***Misinterpreted Motives***

An opponent's motives can be misinterpreted according to the CRC. This often happens as a result of negative stereotypes that people develop of their opponents in a dispute. As conflicts escalate, communication deteriorates, and distrust tends to build up. Opponents are framed in increasingly negative ways—as short-sighted, stubborn, selfish, and even evil. Given such a negative mindset, disputants often misinterpret the motives of their opponents, assuming them to be more aggressive or more hostile than they actually are. This can result in an overly hostile and aggressive response, which feeds the escalation cycle.

(<http://www.Colorado.EDU/conflict/peace/problem/mmotive.htm>, accessed on 04 March 2003 15h44).

### ***Crisis communication***

The CRC states that in crisis situations, the pace of the conflict accelerates dramatically. This means that the parties have to react very quickly to changing conditions or risk having their ability to protect their interests substantially reduced. Crises are likely to be further complicated by the increased levels of fear, anger, and hostility which are likely to be present. Often in

crises, communication gets distorted or cut off entirely. As a result, rumours often supplant real facts, and worst-case assumptions are an addition and parties often try to keep their real interests, strategies, and tactics secret, and use deceptive strategies to try to increase their relative power.

(<http://www.Colorado.EDU/conflict/peace/problem/crisiscom.htm>, accessed on 04 March 2003 16h00)

### ***New, poorly informed participants***

According to the CRC programme conflicts (and many disputes) are long-term processes which continue over months or years. As conflicts proceed, participants develop a long history of interactions with one another. They get to know each other personally. They also get to know interests, positions, and actions of the various parties as well as the history of efforts to better deal with the conflict. When new individuals become active in the conflict, they are likely to lack this base of experience and, as a result, they are more likely to take actions that they would not have taken if they better understood the conflict's history.

The key to limiting this problem is finding some mechanism for preserving the conflict's history and providing new participants with access to that information. It is important that this mechanism provide people entering the conflict with information that is as unbiased as possible. If new people get their information from a single source, they are also likely to inherit that person's stereotypes. However, to encourage new participants to try new approaches which may allow them to find ways around obstacles which earlier participants were unable to surmount



(<http://www.Colorado.EDU/conflict/peace/problem/newpatic.htm>, accessed on 04 March 2003 16h02).

### *Inaccurate and overly hostile stereotypes*

According to the CRC programme people tend to develop overly-negative images of the other side during conflicts. The opponent is expected to be aggressive, self-serving, and deceitful, for example, while people view themselves in completely positive ways. These stereotypes tend to be self-perpetuating. If one side assumes the other side is deceitful and aggressive, they will tend to respond in a similar way. The opponent will then develop a similar image of the first party, and the negative stereotypes will be confirmed. They may be growing worse, as communication is shut down and escalation heightens emotions and tension.

In KZN educational conflict in many cases are similar and during this research the KZN DoE underwent restructuring. Due to the restructuring process there was a major shuffle of positions within the department. As incumbents became responsible for their new positions and entered into existing conflicts these led to an escalation of conflict as they assume the positions of their superiors.

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(<http://www.Colorado.EDU/conflict/peace/problem/stereoty.htm>, accessed on 04 March 2003 15h45)

#### **The CRC's list of conflict treatments**

According to the CRC, communication is fundamental to all social processes especially conflict. One of the first steps people can take to make conflicts more constructive is to examine their own communication strategies to determine whether or not they are communicating their interests and needs effectively to the other side, and assess whether they understand the perspective of the other side accurately. Much can be done to improve interpersonal and/or intergroup understanding simply by improving the nature and amount of the communication between the parties. Thus, if communication is cut off, it usually should be re-started, although sometimes this is best done with third party assistance, rather than alone.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

The following list of the CRC's conflict treatments will be summarised later in this chapter. The CRC suggests that they may be used singly or in combination or what ever may be necessary to be assured that all sides are being heard and understood accurately:

1. Opening Lines of Communication
2. Question Stereotypes
3. Stereotype-Breaking Actions
4. Shuttle Diplomacy /Mediated Communication
5. Cross-Cultural Communication Strategies
6. Constituent Communication
7. Active Listening
8. New Leader Briefings
9. Crisis Communication
10. Respectful Communication
11. Communication Pre-Tests

***Opening lines of communication***

The CRC asserts that in conflict situations, lines of communication between people and groups often break down. People stop talking to each other, they withdraw representatives (such as ambassadors or observers) that they have in the other's countries, regions, or groups,

and they are much less open about the information they release to the other side. The result is often frequent misunderstandings, exaggerated and overly hostile stereotypes, distrust and fear. Opening lines of communication is one very important step to take if one wants to de-escalate a conflict. Just by re-establishing communication, misunderstandings can be corrected and avoided, stereotypes can be broken down, and trust can be built over time.

However, communication is often difficult to start. When a conflict is much escalated, it is often not possible to simply call up a representative of the other side on the phone and have a "normal" conversation. Usually some kind of structured framework for initial communication must be developed.

The CRC proposes a party intermediary, who often will initiate communication by carrying messages or ideas back and forth between two sides. Eventually, when certain agreements about process can be met, then the intermediary may actually get the parties together for face-to-face communication. This may be very carefully structured and confined at first. Then, as a certain level of interpersonal trust is developed, the communication process can be opened up to be freer and even made routine, so that communication between parties becomes common, and the assistance of a third party is no longer needed.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### *Question stereotypes*

The CRC states that stereotypes are essentially assumptions that are made about a person or group's character or attributes, based on a general image of what a particular group of people is like. Just as people assume that all cars have four wheels, while all bicycles have two, they also

assume that all men have certain attributes that differ from women. In reality, a few vehicles that might be called "cars" have three wheels-as do some bicycles. So, these stereotypes about cars and bicycles are not always accurate. Stereotypes about men and women are even less likely to be accurate, as people's characteristics vary much more so than do vehicles. Some men have physical or psychological characteristics that are more characteristic of women, while some women may resemble men in certain ways. So stereotypes are generalizations that are often oversimplified and wrong.

The CRC further points out that, stereotypes are especially likely to be wrong in conflict situations. When people are engaged in a conflict, their image of their opponent tends to become more and more hostile. As communication gets cut off, people make generalizations and assumptions about opponents based on very sketchy and often erroneous information. They see faults in themselves and "project" those faults onto their opponent, preferring to believe that they are good and their opponents are bad. Eventually, opponents develop a strong "enemy image," that assumes that everything the other side does is evil or wrong, while everything they do themselves is good. Such negative stereotypes make any sort of conflict resolution or conflict management process more difficult.

A first step toward overcoming these problems is becoming aware of the tendency to hold negative stereotypes of opponents, and then making conscious efforts to correct the inaccuracies. Often this is done by increasing person-to-person contacts between people from different groups. Usually, when people meet each other, talk together, and/or work together, they will soon learn that the opponents are not nearly as awful as they had earlier believed.

Small group workshops-dialogues, analytical problem solving workshops, mediation sessions, joint projects, and training programs are all ways in which stereotypes can begin to be broken down and more accurate images of the opponents developed.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm> , accessed on 04 March 2003 16h07)

### *Stereotype-breaking actions*

The CRC clearly makes the point that stereotype breaking actions are actions that one party can take to prove to their opponents that they are better in character than the opponent assumes. This happens where one party may visit the opponent personally, and be more reasonable, friendlier, more agreeable, or more helpful than the opponent expected. When this happens, they are likely to revise their enemy image at least a little bit, concluding that some members of the opposition are reasonable people, or even that the opponents, in general, are more reasonable than they thought they were. This can be gleaned in the examples quoted by the CRC that follow. Anwar Sadat's first trip to Jerusalem was a stereotype-breaking action. No one in Israel thought he would come at all, and when he did, he was much more reasonable, and much more personable than most Israelis expected. The same was true of Mikhail Gorbachev's first visit to the United States. Gorbachev was very warm and friendly toward the American people, and they were very much captivated by him. This effectively broke down many people's stereotypes of Russians as hostile, cold, and aggressive, and replaced those images with an image much more friendly and open.

In addition to making trips to the opposing country or group, other stereotype breaking actions are possible as well. One must simply determine what the other side thinks of you or

expects of you, and then do the opposite. If you are expected to be closed to new ideas, express an interest in listening to new approaches to the problem. If you are expected to be selfish and aggressive, take a non-assertive stance and make a small concession that demonstrates good will and a willingness to cooperate with the other side. The goal is simply to contradict the negative images that people usually have of their opponents, and begin to replace these negative images with more positive ones.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### *Shuttle diplomacy /mediated communication*

In much escalated conflicts, the CRC makes a point that increasing communication between the parties directly can do more harm than good. Often the parties will simply continue the ongoing destructive debate repeating their non-negotiable positions and demands over and over again, accusing the other side of wrong-doing and evil intent, and trying to score "points" against the opponents or with people on their own side or sitting in the middle. In doing this, an attempt is made to seem better, smarter, more righteous than the other side, and to make the other side look as bad as possible. This type of "Communication" the CRC states seldom makes situations better but rather make them worse. For that reason, they suggest that one opens up the lines of communication to help resolve a potentially serious conflict. One way suggested by the CRC around this problem is to rely on shuttle diplomacy or mediated communication at the early stages of an escalated conflict when direct communication is likely to be counterproductive. If a third party can be found who will carry information back and forth between parties, a reliable means of communication can be established that is not as prone to the grandstanding of face-to-face or media-based communication. The intermediary

can relay questions and answers, and can privately suggest ideas (of his own or from one of the parties) for de-escalating the conflict that could not be made publicly. By keeping the communication private and indirect, the parties will not feel a need to use the debating tactics they commonly use in public conversations, and will be able to build up a level of trust that could not have been developed in those circumstances. Once this trust and a certain level of mutual understanding is developed, then face-to-face and even routinized communications can be started.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### *Cross-cultural communication strategies*

The CRC asserts that the key to effective cross-cultural communication is knowledge. Firstly it is essential that people understand the potential problems of cross-cultural communication, and makes a conscious effort to overcome these problems. Secondly it is important to assume that one's efforts will not always be successful, and adjust one's behaviour appropriately.

For example, one should always assume that there is a significant possibility that cultural differences are causing communication problems, and be willing to be patient and forgiving, rather than hostile and aggressive, if problems develop. One should respond slowly and carefully in cross-cultural exchanges, and not jump to the conclusion that you know what is being thought and said.

The CRC states here that intermediaries who are familiar with both cultures can be helpful in cross-cultural communication situations as intermediaries can translate both the substance and the manner of what is said. They can tone down strong statements that would be considered



appropriate in one culture but not in another, before they are given to people from a culture that does not talk together in such a strong way. Intermediaries can also adjust the timing of what is said and done because some cultures move quickly to the point while others talk about other things long enough to establish rapport or a relationship with the other person and this could cause them to be uncomfortable.

If a mediator is of the same culture or nationality as one of the disputants, but not the other, this can make communication even more difficult. The CRC points out that it appears to show bias, even when none exists. Even when bias is not intended, it is common for mediators to be more supportive or more understanding of the person who is of his or her own culture, simply because they understand them better. Yet when the mediator is of a third cultural group, the potential for cross-cultural misunderstandings increases further. In this case engaging in extra discussions about the process and the manner of carrying out the discussions is appropriate, as is extra time for confirming and re-confirming understandings at every step in the dialogue or negotiating process.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h10)

### ***Constituent communication***

The CRC asserts that in most dialogue, negotiation, and consensus processes involve a relatively small number of people, who may be acting on behalf of a much larger constituency. As the small group works together over time, they often develop a level of understanding, trust, and an image of the problem that differs considerably from their constituents, who have not been involved in the small group process.

Then, when the representatives come back to their constituents with a proposal which seems reasonable to them (as they understand the constraints under which it was developed), the constituents may react very differently, because they don't have the understanding of the process or the substance of the ongoing discussions. (Some scholars refer to this as the "re-entry problem, "negotiators or dialogue participants" must "re-enter" their old groups, but when they do so they find they are not welcome, but rather are shunned, and their work denounced, not applauded.)

One of the causes of this problem is inadequate communication with the constituent groups as the small group process is going on. Although it is impossible to have everyone involved in the negotiation or dialogue, if the results of the process are to be transferred to the larger population, the representatives should frequently check back with their constituencies to make sure they understand what is happening in the small group process and, in the case of negotiation, feel as if they have adequate input to it. Without frequent communication with constituents, the risk of a re-entry problem and the rejection of any ultimate agreement increases significantly.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h15)

### ***Active listening***

The CRC defines "active listening" as a way of listening and responding to another person that improves mutual understanding.

They indicate that often when people talk to each other, they don't listen attentively. They are often distracted, half listening, half thinking about something else. When people are engaged in

a conflict, they are often busy formulating a response to what is being said. They assume that they have heard what their opponent is saying many times before, so rather than paying attention; they focus on how they can respond to win the argument.

Active listening is a structured form of listening and responding that focuses the attention on the speaker. The listener must take care to attend to the speaker fully, and then repeats, in the listener's own words, what he or she thinks the speaker has said. The listener does not have to agree with the speaker; s\he must simply state what they think the speaker said. This enables the speaker to find out whether the listener really understood. If the listener did not, the speaker can explain some more.

The CRC identified the following benefits of Active listening:

1. It forces people to listen attentively to others.
2. It avoids misunderstandings, as people have to confirm that they do really understand what another person has said.
3. It tends to open people up, to get them to say more. When people are in conflict, they often contradict each other, denying the opponents' description of a situation. This tends to make people defensive, and they will either lash out, or withdraw and say nothing more. However, if they feel that their opponent is really attuned to their concerns and wants to listen, they are likely to explain in detail what they feel and why. If both parties to a conflict do this, the chances of being able to develop a solution to their mutual problem becomes much greater.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### *New leader briefings*

When new people enter a negotiation or become leaders of a group involved in an ongoing conflict, it is important that they be fully briefed about the history of the conflict and conflict management or resolution processes that have already taken place. Although it is inevitable that the new people will not see things exactly the same way as the people they replace, less disruption of the conflict management process will occur if the new people at least enter the process understanding what is going on and what has gone on before. That way, they will not insist on doing things that have already been done, ask questions that infuriate the other side because the answer is "so obvious," or otherwise harm relationships or the process itself simply out of ignorance of the past.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h18)

### *Crisis communication*

In crisis situations, the pace of the conflict accelerates dramatically. This means that the parties have to react very quickly to changing conditions or risk having their ability to protect their interests substantially reduced. Crises are likely to be further complicated by the increased levels of fear, anger, and hostility which are likely to be present. Often in crises, communication gets distorted or cut off entirely. As a result, rumours often supplant real facts, and worst-case assumptions drive the escalation spiral. In addition, parties often try to keep their real interests, strategies, and tactics secret, and use deceptive strategies to try to increase their relative power.

In these difficult situations, the parties' ability to make rapid and sound decisions is largely dependent on their ability to quickly obtain reliable information. Thus, communication needs to be increased during crises, not cut off. To prevent uncontrolled escalation, disputants must be able to effectively communicate with adversaries, intermediaries, and other parties effectively, even under urgent and highly emotional conditions. In the most serious situations, crisis communication involves efforts to prevent or halt violent confrontations. "Hotlines," rumour control teams, and crisis control centres all offer related approaches for dealing with this problem.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### *Respectful communication*

Respectful communication as pointed out by the CRC is a simple way to communicate more effectively. You need to treat the person you are addressing respectfully even if you do not, really, respect him or her. Exhibiting disrespect is almost never helpful, as it immediately places the listener in an adversarial and probably hostile frame of mind, and encourages them to disregard or dispute anything that is said. This does not mean that you have to agree with everyone and hide any opposition you hold to their attitudes, beliefs, values, or positions. It simply means that you should state your differences in a way that does not belittle theirs. For instance, instead of saying "that is a really stupid way of looking at the situation," it is usually more helpful to say "well, I see the situation somewhat differently." Then you can go on to explain how you see it, without ever saying directly that they are "stupid" or even wrong, but simply that it is possible to see things in different ways.

What does this say about expressing anger? Anger should not be hidden, as it is important that your opponent understand that something they did or something that happened made you very angry. Yet you can explain that without lashing out and escalating the conflict further. By explaining, with "I messages," that "I am very angry because . . ." you can explain your feelings without being as likely to generate an anger-escalating response.

The level of anger and hostility which is considered appropriate to exhibit will vary, of course, from culture to culture. But when in doubt, treating opponents with respect and a relatively calm demeanour is likely to be helpful.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### ***Communication pre-tests***

Frequently communications between people involved in conflict situations are misunderstood because in conflicts people are often speaking in anger or fear. They also see the situation differently, and interpret outside events differently. People in conflict therefore interpret oral or written communication in ways which are very different from what the speaker or writer intended even when they take care to communicate accurately and honestly.

The CRC proposes the "pre-test" strategy for limiting this problem which includes draft versions of written documents, speeches, or radio and television segments before officially broadcasting or publishing them. This can help pinpoint possible areas of misunderstanding before they become widespread. This can be done by recruiting a small test group of people who are both sympathetic with the opposing side and interested in contributing to more accurate communication and a more constructive debate. This group can be asked to review

draft versions of communication materials and tell the authors how they think the materials will be interpreted. In cases where the test group identifies areas of probable misunderstanding, the materials can be reworked to avoid the problem.

(<http://www.Colorado.EDU/conflict/peace/treatment/comm-s.htm>, accessed on 04 March 2003 16h00)

### **Glossary of terms and acronyms pertaining to the conflict resolution in general**

The following concepts will be defined from the Conflict Resolution Consortium (CRC) at the University of Colorado because these terms are also widely used in the South African context. It should however be noted that the Internet is ephemeral, and that since these definitions were downloaded in 2003, the CRC's website has been upgraded, and that these definitions are not included in their present online documentation:

1. Adversarial Approach
2. Adversary / Adversaries
3. Advocacy
4. Arbitration
5. ATNA
6. BATNA
7. Communication channels
8. Compromise
9. Concessions
10. Conciliation
11. Conflict Management
12. Conflict Resolution

### 13. Conflict Transformation

#### *Adversarial approach*

The adversarial approach to a conflict according to the CRC sees the other party or parties as an enemy to be defeated. It can be compared to the problem-solving approach which views the other party or parties as people who have a common problem that needs to be jointly solved. The adversarial approach typically leads to competitive confrontation strategies, while the problem-solving approach leads to cooperative or integrative strategies for approaching the conflict situation.

#### *Adversary/Adversaries*

The CRC defines “Adversaries” as people who oppose each other in a conflict. They are also called opponents, parties, or disputants.

#### *Advocacy*

*Advocacy is the process of taking and working for particular sides interests’ in a conflict. The CRC states that disputants can also engage in advocacy themselves arguing for their own position in negotiation, mediation, or a political debate. Any attempt to persuade another side to agree to your demands is advocacy*

#### *Arbitration*

Arbitration as defined by the CRC as method of resolving a dispute in which the disputants present their case to an impartial third party, who then makes a decision for them which resolves the conflict. This decision is usually binding. Arbitration differs from mediation in which a third party simply helps the disputants develop a solution on their own.



## ***ATNA***

According to CRC the concept of BATNA stands for the best alternative to a negotiated agreement. The CRC uses "ATNA" to refer to any alternative to a negotiated agreement, not just the best one.

## ***BATNA***

The CRC states that any negotiator should determine his or her BATNA before agreeing to any negotiated settlement. If the settlement is as good as or better than one's BATNA, the agreement should be accepted. If the alternative is better, it should be pursued instead of the negotiated settlement. When one party's BATNA is good (or even if they just think it is good), they are unlikely to be willing to enter into negotiations, preferring instead to pursue their alternative option

## ***Communication channels***

Communication channels are the means available to communicate with another person or group. They may include direct face-to-face communication, telecommunications (telephone, e-mail, written communications), or indirect communication--through third parties or the media, for example.

## ***Compromise***

The CRC defines compromise as a solution to a mutual problem that meets some, but not all, of each of the parties' interests.

### ***Concessions***

According to the CRC concessions are things one side gives up to try to de-escalate or resolve a conflict. They may simply be points in an argument, a reduction in demands, or a softening of one side's position.

### ***Conciliation***

Conciliation as defined by the CRC involves efforts by a third party to improve the relationship between two or more disputants. It may be done as a part of mediation, or independently. Generally, the third party will work with the disputants to correct misunderstandings, reduce fear and distrust, and generally improve communication between the parties in conflict. Sometimes this alone will result in dispute settlement; at other times, it paves the way for a later mediation process.

### ***Conflict management***

The term "Conflict management" is defined by the CRC as that which refers to the long-term management of intractable conflicts and the people involved in them so that they do not escalate out of control and become violent.

### ***Conflict resolution***

The CRC defines the term "conflict resolution" (along with dispute resolution) as the process of resolving a dispute or a conflict permanently, by providing each sides' needs, and adequately addressing their interests so that they are satisfied with the outcome.

### *Conflict transformation*

“Conflict transformation” is being used more and more to refer to a change (usually an improvement) in the nature of a conflict. According to the CRC it is a de-escalation or a reconciliation between people or groups. Unlike conflict resolution, which denies the long-term nature of conflict, or conflict management, which assumes that people and relationships can be managed as though they were physical objects, the concept of conflict transformation reflects the notion that conflicts go on for long periods of time, changing the nature of the relationships between the people involved, and themselves changing as people's response to the situation develops over time.

### *Conflicts of interest*

This term according to the CRC refers to the situation in which a person has a vested interest in the outcome of a decision, but tries to influence the decision making process as if they did not. In other words, they stand to benefit from a decision if it goes a particular way, but they participate in the decision making process as if they were neutral.

### **MOODLEY'S FINDINGS ABOUT ETHNIC STEREOTYPING AMONG KZN HIGH SCHOOL LEARNERS**

Moodley (2001:28) characterizes stereotypes as a group or category that influences the behaviour of people. During ethnic stereotyping one makes value judgements of a person, based on their ethnic identity, not based on their actual personal attributes. A person that employs ethnic stereotyping treats her/ his own group as the in-group, and makes favourable judgements of them because they belong to the same group. At the same time the person who stereotypes treats other groups and their members as out-groups and negatively stereotypes them because they do not belong to her/ his own group.

Moodley (2001:28) indicates that it is shown empirically that certain group differences, for example, colour, ethnicity and language play a more prominent role than others. Social and cultural influences play an important role

According to Moodley (2001:23) South Africa is clearly still emerging from a legacy of apartheid education. Schools show visible evidence of change - racially mixed classes- but not the invisible markers of real change, that is a change in personal values in mind sets of parents, teachers and learners, manifested as a change in interpersonal attitudes. The mindset of “us” versus “them” still predominates as legacy of the past history of the country. Each group still has cultural and racial stereotypes of the other groups.

Moodley (2001:23) further illustrates whether people are aware of it or desire it, they all hold beliefs about social groupings and these beliefs influence their interaction with people. Tension between members of different cultures often manifests itself in the form of stereotypical thinking and beliefs about oneself, one’s group, other individuals and the groups that they belong to. Stereotypes incorporate general knowledge about groups and play an important role in our evaluation of our own groups and critically, in our evaluation of other groups. Stereotypical judgments thus play a critical role in inter-ethnic relations and inter-ethnic assessment.

Stereotypes are a fundamental element of discrimination and discriminatory attitudes towards other groups. While the South African constitution espouses freedom and equality, the current *everyday tensions of political, social and economic imbalances* are still carried through to the classroom. There is an appearance of, a semblance of, trying to enforce equality but rigid stereotyping is still evident in the day-to-day interactions of the different groups.

Constitutional and legal change has not filtered down to the individual level as mindsets and stereotypical beliefs have not changed. Until efforts are made to change perceptions of learners and of educators', tensions and conflict in the schools will continue.

### **KLOPPER'S THEORY OF THE OPTIMIZATION OF HUMAN COMMUNICATION**

Klopper (2002:278) formulates a general theory in which he proposes a three-phase continuum for forms of human communication, namely a cooperative phase for persuasive communication, a competitive phase for negotiation and a confrontational phase during which participants resort to various forms of violence due to communication breakdown.

The implications of Klopper's continuum is that negotiation is the most successful if it can be conducted in terms of persuasive objectives, and that confrontations have to be restated in terms of clear competitive objectives before negotiation can take the place of confrontation.

Klopper (2003b:3)'s states that reduced to its essence, communication is a contested meeting of minds, where fellow communicators cooperate, compete or confront one another to clearly convey their intentions and contentions. To achieve such a meeting of minds one simultaneously has to engage in intrapersonal and interpersonal communication.

Intrapersonal communication is one of the most neglected forms of human communication. Yet, it is vital to one's success or failure in persuading others to see one's point of view, and ultimately, in Klopper's words, "to whether one lives a successful or failed life."

Intrapersonal communication consists of a range of subconscious reasoning processes that one employs while just thinking about things on one's own, or while one communicates with others. Considering alternatives, deciding between options, weighing up facts, determining the validity of statements, considering interrelationships, discerning the intentions behind the

actions of others, or their attitudes, these are all forms of intrapersonal communication that allow us to be well socialised members of the groups to which we belong. Intrapersonal communication goes into overdrive as soon as one actively interacts with others.

According to Klopper a person who is conscious, sober and of sound mind cannot help but engage in intrapersonal communication when interacting with others. Furthermore, Klopper says, even though one may not be saying anything out loud, one's body language is leaking opinions and attitudes all of the time unless one is actively concealing these by intentionally keeping one's facial expressions, gestures body movements and body stances neutral and non-committal.

In contrast with intrapersonal communication, interpersonal communication can be characterised as any direct interaction between two or more persons with the intention of exchanging knowledge to negotiate social influence. Communication should therefore not be seen as a power-neutral human interaction during which we merely speak or write messages to convey meaning.

A combination of knowledge and communication skills determine the individual's social influence within groups, because they enable the individual to cooperate with others for survival's sake, to effectively compete with others in their group for interpersonal power and social influence, and to attempt to get others to comply with what s/he wants them to do. It is important to acknowledge that since the beginning of humankind communication is not per se the transmission of meaning from one mind to another, but the contested negotiation of power relationships between individuals through knowledge transmission. The greater the amount of survival related knowledge that one commands, the more one's social influence

among others with whom one interacts, because knowledge allows one to contribute to the ability of one's group to compete with other groups for survival and prosperity. In a time of war, communication is in the heart of any group's preplanned, rehearsed and coordinated ability to engage in forms of confrontation to maintain safety, and to gain and maintain the competitive advantage.

### **Klopper's Cooperation $\Rightarrow$ Competition $\Rightarrow$ Confrontation Interaction Continuum**

Klopper (2002: 278) posits a three-phase compliance-gaining human interaction continuum as part of a general theory of the optimisation of human communication. Stated briefly, this theory implies that communication interactions are forms of behaviour that range along a continuum: cooperate $\Rightarrow$ compete $\Rightarrow$ confront. Effective communicators have to be good at all three of these to get along with others in their groups, to realise their best potential in their groups, to withstand rank challenges within their groups, to contribute to the betterment of their groups, and to help survive the hostile intentions of competing groups.

According to Klopper (2002:3) the C $\Rightarrow$ C $\Rightarrow$ C continuum can be characterized by means of a few axiomatic statements:

- Humans are driven to communicate for survival's sake.
- The survival principle of enlightened self-interest determines that one only cooperates with others if it is to one's advantage.
- People or groups compete to gain and maintain the survival advantage.
- Competing individuals or groups engage in confrontations to obtain or retain competitive advantage.

- Humans also employ the  $C \Rightarrow C \Leftrightarrow C$  continuum in education, business and leisure.

Klopper's analysis of human communication, as reported above, makes it clear that it is in any person's best interest to communicate in persuasive, non-confrontational manner with members of their own groups whenever possible. It also implies that human groups have to compete with other groups for survival's sake and to succeed. Finally, Klopper's proposals make it clear that confrontation should *only* be an option of last resort, and that during confrontations the best conflict transformation strategy would be to do reconceptualise *confrontation as negotiation*, and to influence the negotiation process in the direction of persuasive communication by providing conflicttees with new mental images that enable them to create narratives in which they represent themselves and their opponents as equal beneficiaries of the negotiation process.

#### **BOJE'S FRAMEWORK OF STORYTELLING RESEARCH**

Boje (2001:1) characterises the concept "story" as an account that is less than a narrative. This is because a narrative requires a *plot (people doing things to one another)*, as well as coherence (in the form of an interrelated set of events that proceed from a tension-filled unsettling event to the final restoration of peace and quiet among the participants). He argues that in narrative theory "story" is folksy, without emplotment, a simple telling of chronology.

Boje proposes an *antenarrative* which he characterises as fragmented, nonlinear, incoherent, collective, unplotted and pre-narrative speculation, polyphonic improper storytelling, a bet, a wager on which a proper narrative can be constructed. Boje focuses on the analysis of stories that are too unconstructed and fragmented to be analyzed by traditional approaches.



Boje (2001:5) says that the “postmodern and chaotic soup of storytelling” is difficult to analyze because stories in organization are self-deconstructing, flowing, emerging, networking and not at all static.

### **Narratives and antenarratives**

According to Boje a narrative is something that is consciously construed according to predetermined plot devices. Boje states that a narrative can be derived from a story by adding *plot* and *coherence* elements to the storyline. A story is therefore *ante* (before) narrative and therefore *narrative* is post-story.

In this respect the bargaining that takes place in the KZN Chamber (KZNC) is story and the resolutions, minutes are narratives that is given plot, and coherence to the expectation of governing legislations and not an indication of the polyphonic nature of the debate in the KZN Chamber.

### **Boje’s five dimensions of antenarrative**

- Antenarrative is both before what ever narratology as a method and theory supplements, frames and imposes onto story.
- Antenarrative gives attention to speculation, ambiguity of sense and guessing as to what is happening in the flow of experience. It gives answers to “what is going on here?”
- Antenarrative directs our analytic attention to the flow of story-telling, as a sense making device to lived experience before the narrative requirements of beginnings, middles or endings.

- Antenarrative is the Tamara of storytelling of which Boje refers to in earlier research (Boje 1995). He explains that in Tamara, Los Angeles' longest-running play, a dozen characters unfold their stories before a walking sometimes a running audience. These characters he states are all trying to find out "who done it". The audience instead of remaining stationary viewing a single stage fragments into smaller units that chase characters from one room to the next, from one floor to the next, even going to bedrooms, kitchen, to other chambers to co-create the stories that interest them the most. Boje highlights the plurivocal interpretations of organizational stories in a distributed and historically conceptualised meaning network. Storytelling organizations are antenarrative, existing to tell their collective stories, to live out their collective stories, to be in constant struggle over getting the stories of insiders and outsiders straight. It is a sense making exercise that is coming into being, but not finished or concluded in narrative retrospection.
- *Antenarrative* is a collective memory before it becomes reified into the story, the consensual narrative.

When Boje's account of narratives and antenarratives is combined with Klopper's statement that negotiations can be reconceptualised persuasively by providing conflictees with new mental images that portray all conflicted parties as potential winners, one has a powerful framework for conflict transformation, because it provides a conceptual mechanism for transforming the disequilibrium of conflict to the equilibrium of peace.

## LEDERACH'S VIEWS ON CONFLICT MANAGEMENT, CONFLICT RESOLUTION AND CONFLICT TRANSFORMATION

Conflict theorists and practitioners like Lederach (1989), advocate the pursuit of "conflict transformation," as opposed to "conflict resolution" or "conflict management." Lederach asserts that *conflict transformation* is different from "conflict resolution" or "conflict management" because it reflects a better understanding of the nature of conflict itself.

The term "conflict resolution" implies that conflict is a problem and is seen to be bad and therefore should be ended. It also assumes that conflict is a short term phenomenon that can be "resolved" permanently through mediation or other intervention processes.

"Conflict management" correctly assumes that conflicts are long term processes that often cannot be quickly resolved, but the notion of "management" suggests that people can be directed or controlled as though they were physical objects. In addition, the notion of management suggests that the goal is the reduction or control of volatility more than dealing with the real source of the problem.

Lederach states that conflict transformation is dialectic in nature and should be recognized as such rather than simply try to eliminate or control conflict. By this he means that social conflict is naturally created by humans who are involved in relationships, yet once it occurs, it changes (i.e., transforms) the events, people, and relationships that created the initial conflict. Thus, the *cause-and-effect relationship goes both ways from the people and the relationships to the conflict and back to the people and relationships*. In this sense, "conflict transformation" is a term that describes a natural occurrence and seeks to investigate the truth of opinions.

Conflicts change relationships in predictable ways, altering communication patterns and patterns of social organization, altering images of the self and of the other.

Conflict transformation is also a prescriptive concept. It suggests that if left alone, conflict can have destructive consequences. But the destructive consequences can be modified or transformed so that self-images, relationships, and social structures improve as a result of conflict instead of being harmed by it. *In order for conflict to transform it involves transforming or changing perceptions of issues, actions, and other people or groups.*

*Conflict can transform perceptions by accentuating the differences between people and positions. Effective conflict transformation therefore can work to improve mutual understanding even if people's interests, values, and needs are different, even non-reconcilable; progress can be made if each group gains a relatively accurate understanding of the other.*

Transformation includes transforming the way conflict is expressed. It may be expressed competitively, aggressively, or violently, or it may be expressed through non-violent advocacy, conciliation, or attempted cooperation. Lederach sees advocacy and mediation as being different stages of the conflict transformation process contrary to many conflict theorists and activists, who perceive advocacy and mediation as being in opposition to each other. *Activism is important in early stages of a conflict to raise people's awareness of an issue. Activism uses non-violent advocacy to escalate and confront the conflict. Once awareness and concern is generated, then mediation can be used to transform the expression of conflict from "mutually destructive modes toward dialogue and interdependence." (Lederach, 1989:14)*

Such transformation, Lederach suggests, must take place at both the personal and the systemic level. At the personal level, conflict transformation involves the pursuit of awareness, growth,

and commitment to change which may occur through the recognition of fear, anger, grief, and bitterness. These emotions must be outwardly acknowledged and dealt with in order for *effective conflict transformation to occur*.

Lederach posits that peacemaking also involves systemic transformation of the process of increasing justice and equality in the social system as a whole. This may involve the elimination of oppression, improved sharing of resources, and the *non-violent resolution of conflict* between groups of people. Each of these actions reinforces the other. In other words, transformation of personal relationships facilitates the transformation of social systems and systemic changes facilitate personal transformation. Key to both kinds of transformation is truth, justice, and mercy, as well as empowerment and interdependence. These concepts are frequently seen as being in opposition to each other; however, they must come together for reconciliation or "peace" to occur.

In Klopper's (2002) terms, conflict transformation is possible if conflictees adopt a new belief system *in which there are no agents and patients, no winners and losers, but co-agents, equal winners, who share a common peaceful future*.

#### **WELA'S FRAMEWORK FOR ANALYSING THE ROLE OF EMOTION IN CONFLICT**

Wela (2001:3) analyses how language encodes emotion and what role emotion plays during *negotiation*. Wela reviews canonical literature on the nature of human emotions, and comes to the conclusion that there are no empirical grounds to identify a set number of *emotions*. According to him it is more appropriate to distinguish particular mind-body states during which people experience subjective awareness that they term "emotions." Wela then goes on to show that emotive awareness is so fundamental to humans that all language structures are involved in the encoding of emotive awareness.

Finally, Wela (2001) applies the insights that he reports regarding emotive encoding in language to the process of conflict transformation. He in particular relates his insights about emotive mind-body states to an earlier conflict transformation framework of the Conflict Research Consortium of the University of Colorado, USA, than their present framework that this researcher has outlined earlier on in this chapter.

## CONCLUSION

In this chapter the researcher provided a conceptual framework concerning the cooperation, competition and confrontation during communication for conflict. Taking Moodley (2001) as point of departure, the researcher provided a summary of stereotyping because this process figures prominently during unresolved conflict.

Taking Klopper (2002) as points of departure, the researcher outlined how conflict arises as a result of a breakdown of communication because agents tend to act as counteragents rather than as co-agents.

The researcher argued that conflict can be transformed by reconceptualising conflict as a future scenario where co-agents negotiate a win-win outcome for the conflict that they are experiencing. In this regard the researcher made particular reference to Klopper's (2002) *cooperate>compete> confront* continuum to indicate how conflict can be transformed to negotiation according to fair rules, and how negotiation can be conducted according to persuasive principles.

The researcher also highlighted how emotions can run high and how they influence the decisions taken during negotiations.

Finally, the researcher highlighted Boje's (2001) account of narratives and antenarratives and showed that when such narratives are analysed according to the principles enunciated in Klopper (2002) negotiations can be reconceptualised persuasively by providing conflicttees with new mental images that portray all conflicted parties as potential winners. One here has a powerful framework for conflict transformation, because it provides a conceptual mechanism for transforming the disequilibrium of conflict to the equilibrium of peace.

## *Chapter 3*

### SUMMARY OF EDUCATION LABOUR RELATIONS COUNCIL COLLECTIVE AGREEMENTS AND RESOLUTIONS

#### INTRODUCTION

In this chapter the researcher provides a summary of the agreements and resolutions of the Education Labour Relations Council and resolutions of the Chamber that respectively govern its implementation in education departments country-wide and provincially, and the decisions that are reached at arbitration meetings in KwaZulu-Natal.

#### COLLECTIVE AGREEMENTS AND RESOLUTIONS OF THE ELRC

In the course of the year 2001 to 2003, the following resolutions and collective agreements were signed in the ELRC nationally. While a summary of some of the ELRC matters is provided some of the content is privileged information, including the relevant pieces of legislation that will follow. It must be noted that the following resolutions and agreements were reached for implementation purposes in the Department of Education:

- Resolution No. 1 of 2001: Vote weights for the Trade Unions that are parties to the council.
- Resolution No. 2 of 2001: Procedures for absorption of educators declared additional to the Post establishment.
- Resolution No. 3 of 2001: Regrading of institutions.
- Resolution No. 4 of 2001: Permanent appointment of underqualified educators.
- Resolution No. 5 of 2001: Amendment of measures in order to extend & clarify the Provisions for the appointment of educators who are not professionally qualified.



- Resolution No. 6 of 2001: Appointment of examiners in order to allow educators in curriculum related services to be included as candidates and to extend panels responsible for setting of examination papers at a national level.
- Resolution No. 7 of 2001: New Leave Regulations in education.

In the course of 2002, collective bargaining workshops were conducted at a provincial level to debate and to seek mandates on a variety of areas. These workshops had to be cascaded to lower structures of the parties based on ELRC funding. ELRC funding did not materialize and the extent that mandates were sought is questionable. Never the less the Employer and labour finally concluded the following collective agreement:

**Collective Agreement No. 3 of 2002: Performance Management & Development Scheme for Office Based Educators**

The purpose of the agreement was to provide a basis for decisions on salary progression, rewards and other measures that require a certain level of performance, the basis of which shall be applicable regulations in terms of the Public Service Act of 1994 as amended.

**Collective Agreement Number 4 of 2002: Permanent appointment of Unqualified Educators:**

This resolution was necessitated by the fact that large numbers of unqualified educators which are grade 12 or lower without any teachers qualification have been teaching for a considerable period of time, notwithstanding that their employment on a continuous basis, their appointments have always been in a temporary capacity. The collective agreement provided for the following:

In the future, their appointment would be effected only instances if no qualified educator could be recruited, and in such an instance, their appointment would be in a temporary capacity.

Unqualified in a temporary, full time basis to substantive posts and who, on 31 December 2001, have rendered satisfactory service for at least 10 years, will, subject to applicable legislation become permanent in line with the performance evaluation system agreed in council.

**Collective Agreement Number 5 of 2002: Recognition for Improvement in REQV**

This agreement deals with the late submission of a higher qualification which has historically placed an administrative burden on the department by having to pay for unbudgeted backdated salaries. In future an educator, who qualifies for a salary adjustment, must submit such proof within twelve months or forfeits the retrospective payment.

**Collective Agreement Number 6 of 2002: Implementation of Basic Conditions of Employment Act (BCEA), 1997, in Education**

This agreement scopes the fact that the BCEA was implemented in the public service with effect from June 2000, and now provides for the authorization and payment of overtime work in terms of Personnel Administration Measures (PAM) including the payments of duties performed on a Sunday to be prescribed with fixed rates as reflected in PAM. however, no provision for re-numeration is made for night work i.e. work performed after 18:00 at an education institution. This agreement is valid until 11 December 2003.

**Collective Agreement Number 8 of 2002: Payment of Acting Allowance for an Educator Acting in a Higher Post where the Permanent Incumbent is Absent**

This agreement allows for an acting allowance to be paid to an educator in instances where the permanent incumbent is absent due the following reasons:

- Maternity
- Sick leave
- Study leave
- Suspension
- Secondment for a period > 12 weeks but < /= 12 months.

In the course of 2003 a number of crucial agreements were concluded in the National ELRC.

The resolutions reached, are summarised below.

**Collective Agreement Number 1 of 2003: Evaluation Procedures, Processes and Performance Standards for Institution Based Educators**

This agreement provides for:

- Salary & Grade Progression
- Incentives & rewards
- Incapacity
- Confirmation of Permanency (Assessment of Unqualified Educators)

### **Collective Agreement Number 2 of 2003: Transfer of Serving Educators in terms of Operational Requirements**

The scope of this agreement determines the procedure to be utilized in the movement of staff declared additional to the post establishment from one institution to another in the absence of existing criteria. The rationalisation and redeployment resolution 6 of 1998 was terminated and was replaced by Resolution No.2 of 2001 which provided for the absorption of all excess personnel. Post Provisioning Norm 2003/3 created a situation whereby the Department moved educators unilaterally outside of mutually accepted criteria which caused wide spread disputes.

### **Collective Agreement Number 3 of 2003: Protocol & Instrument for use when Observing Educators in Practice for the Purpose of Whole School Evaluation (WSE) and Developmental Appraisal (DAS)**

Contradictions with the implementation of DAS a collective agreement and WSE a national policy of the Department of Education resulted in tensions and conflict between the Department of Education and SADTU. A bilateral agreement between SADTU and the DoE resulted in a protocol to be utilised when observing education on classroom visits. This resolution now makes the Protocol Instrument a Decision of the council and hence binding to all parties. This resolution between SADTU and the DoE became a source of conflict between the DoE and other teacher organisations.

### **Collective Agreement Number 4 of 2003: Post and Salary Structure for Educators**

This agreement included:

- Adjustment of the new salary structure: Adjustment to the new salary structure which consisted of 16 notches of 1% where the first notch will be the same as the first notch of the applicable salary level. The other notches of the salary levels were abolished.

- **Salary Progression:** Provision is made for salary progression by means of a 1% notch increment per year based on an educator's acceptable/satisfactory performance.
- **Grade Progression:** Provides for educators' progress from one grade to another according to specific criteria.
- **Incentives and Rewards:** *Caters for an establishment of joint task teams of parties to the chamber to investigate incentives and rewards for educators.*
- **Backlog in Salaries of Educators:** *Caters for an establishment of joint task teams of parties to the chamber to formulate recommendations to ELRC to address the backlog in Salaries of Educators*

#### **COLLECTIVE AGREEMENT NUMBER 5 OF 2003:**

Amendments to measures in dealing with Recognition of Experienced Educators gained outside education prior to 01 July 1996.

#### **COLLECTIVE AGREEMENTS AND RESOLUTIONS OF ELRC PROVINCIAL CHAMBER**

The Chamber dealt with a number of controversial labour matters that are summarised below.

##### **Resolution 2 of 2002: Displaced Educators**

Usually the placement or redeployment of educators who were displaced as a result of political violence, intimidation and threats were dealt with by HRM 12/1997 which is a collective agreement. This policy was initiated by SADTU as a result of numerous SADTU educators being displaced and the DoE (Employer) made it increasingly difficult for SADTU educators to find alternative schools. During the same time a number of educators and school principals from reactionary organisations who were deemed to be guilty of misconduct in many instances for financial mismanagement misused the HRM 12 of 1997 to apply for displacement and remained on special leave with the approval of the DoE instead of using the provision of Section 17 & 18 of the Employment of Educators Act no 53 of 2000. This was an untenable

situation which resulted in the review of HRM 12 of 1997 as educators of all levels were being paid to be at home creating conflict with educators who were genuinely displaced. This also created negative publicity for education in general.

The results of negotiations with the parties of the Chamber resulted in the mutually agreed Resolution 2 of 2002 in the KZN Chamber. This agreement provides for displaced educators to be deemed surplus at institutions where they were employed and to be dealt with in terms of procedures applicable to displaced educators. This meant that for a level one educator they will be provided for by being automatically short listed for a post which they have applied for and their subsequent transfers. For promotion post holders used every attempt to facilitate their safe returns to their original school and if unsuccessful a cross transfer will be negotiated at district, regional and provincial level in closed vacancy list or Special Transfer List. Unsuccessful displaced educators will be held additional to the staff establishment for a reasonable period.

A series of processes were put into place to resolve the predicament of displaced educators. In the Lower South Coast alone 60 cases in the year 2002 was resolved. However, the DoE is served its intention to terminate the agreement. In general, with foresight of the general elections ahead and the extent of victimisation, threats and assaults on SADTU members by reactionary school governing bodies with specific political affiliations, SADTU has opposed the termination of HRM 12 of 1997.

## **Promotions**

### ***School-based promotions***

Since the year 2000, there has been a huge backlog of unresolved promotion disputes at the level of the Regional Grievance Committee of the Department of Education and at the level of

the ELRC. Approximately 50% of all the disputes declared at the National ELRC emanate from KZN and the majority are promotion related disputes. From 1999 to the end of 2002 there were over 800 unresolved disputes, and approximately 70% being promotion disputes. This led to SADTU applying pressure on the General Secretary of the ELRC to agree on an "Expedited Conciliation/Arbitration Process popularly referred to as the "Con-Arb" conducted under the auspices of the ELRC to address the backlog. The most recent "Con-Arb" process dealt with disputes emanating from HRM Circulars 70 and 71, and 58 of 2001 and HRM 16 of 2002. A successful meeting of the ELRC facilitated that all disputes registered with the Grievance Committees of the Department be dealt with the ELRC. The "Con-Arb" reduced the backlog. Most of these cases were supercession cases where the number one candidate on the recommended list was superceded by another candidate and this was found to still be a grey area as arbitrators ruled inconsistently as Resolution 5 of 1998 catered for supercession.

A new area of conflict or dispute arose out of this process when two parties in disputes of the same teacher organisation were in dispute. The area of dispute was on representation as both members had the right to representation on the very same post. Teacher Unions and especially SADTU managed to secure representation on both sides, one by the Teacher Union and the other through a colleague.

### ***Office-based promotions relating to the posts in Human Resource Management (HRM) 52 of 2002***

In the last quarter of 2002, 74 office based posts were advertised by the department together with management plans for the filling of such posts. Many regions complied with the management plans. However, the DoE selectively chose to release 6 of the 74 posts in

particular those located in the old Districts. At a Chamber meeting the DoE declared reluctance to release the balance of the posts by referring to Resolution 7 of the Public Service Coordinating Bargaining Council. This did not justify the release of the regional office posts as the Restructuring of the Department may result in such posts being declared in surplus. HRM 52 of 2002 posts was a strong contention by Teacher Organisations. The following was argued in Chamber resulting in a deadlock and individual disputes being declared at the ELRC:

- Promotions are a matter of mutual interest;
- Teacher Organisations were never consulted about restructuring;
- There was no motion placing a moratorium on any posts;
- The Administrative Justice Act of 2000 called for administrative action that was procedurally and reasonably fair;
- All outstanding posts must be immediately released.

#### *Office-based promotions relating to the posts in HRM 34 & 40 of 2003*

The above circulars were met with resistance especially by SADTU who raised the issue that the advert was discriminatory since invited applicants had undergone training in the field of Quality Assurance. SADTU's request was that the advertisement be in line with the Personnel Administration Measures (PAM). The promotions sub-committee of the chamber was tasked to deal with the necessary corrections and to ensure that all schools receive the bulletin.

#### *The open vacancy list: employment of temporary educators*

The open vacancy list has been the struggle and a highly disputed area for the employment of temporary educators and their permanent placement. During 2001 over 300 cases of temporary educators did not receive salaries or reinstatement. The number of cases that arose



increased and it created problems for cases to be handled individually. The ELRC received a registered dispute from SADTU on the unilateral implementation of the Post Provisioning Norms (PPN) 2000. In an arbitration that lasted two months involving 10 witnesses ranging from teacher organisation leaders, principals, Chamber Secretary, to the DoE's Negotiators, a precedent award was in favour of SADTU for the payment and reinstatement of all temporary educators.

The conflict between teacher organisations and the DoE in the course of 2002 escalated resulting in protest action especially by SADTU relating to the DoE failing to provide educators for 40 000 learners in primary schools:

- Termination of temporary educators and failure to remunerate them;
- Failure to advertise 2133 posts in the open vacancy list;
- Failure to pay salaries to acting appointments;
- Selective provisioning of Grade R; and
- Unilateral implementation of PPN 2002.

The escalated conflict took the form of "sit-ins" and prolonged meetings in Departmental offices by teacher union leaders. This conflict continued and culminated with a protest march in different regions. Whilst the PPN dispute was still sub judicae the Department of Education advertised over 5000 posts in HRM 9 & 18. Whilst these post were advertised during the process there were 440 posts that were withdrawn resulting in conflict again.

## **Dispute Prevention**

In the past the ELRC had a dispute monitoring committee of the chamber. Since dispute resolutions function in terms of scheduling disputes, being centralised to the National ELRC it was not possible for the Provincial ELRC to monitor the resolution disputes. The Dispute Prevention Committee was set up and tasked to develop an effective and efficient grievance handling mechanism in order to:

- Reduce the number of disputes in KZN;
- Reduce the time gap between the event causing the dispute and the actual referral of the dispute;
- Develop creative mechanisms to address mass based disputes like promotions; and
- Develop a grievance procedure for promotions.

## **The Workplace Skills Plan**

Some of the aims of the Skills Development Act are:

- To improve the quality of the life of workers, their prospects of work and labour mobility;
- To improve productivity in the work place;
- To promote employment;
- To improve the delivery of social services;
- To provide employees with opportunities to acquire new skills;
- To employ persons who find it difficult to be employed and provide opportunities for new entrants into the labour market;

- To provide learnerships and other training programs; and
- To assist work seekers to find work and for retrenched workers to re-enter the labour market.

However, in the last two years a large number of disputes have arisen around the 1% of the Wage Bill in the educator sector that has been set aside to draw a Workplace Skills Plan in order to fund programs so as to achieve the aims listed above. The disputes that arouse around the Workplace Skills Plan include:

- The inability of the DoE to “ring fence” the 1% skills levy;
- The misdirection of the above funds in terms of needs of departments instead of the Skills Development Aims and the Workplace Skills Plan;
- There is no Quality Management System which coordinates monitors and controls these funds;
- It is difficult to distinguish between monies allocated from Education Condition Grants (ECG) Funds, National Funding for HIV & AIDS and the 1% skills levy;
- Training was biased towards the bureaucracy; and
- No Records have been provided in respect as to who has been trained and hence duplication of training.

The Skills Levy disputes is gradually escalating as the skills plan has not reached teachers who have to sponsor a percentage of their salaries to empower a bureaucracy or allow their sponsor to be mismanaged or even misappropriated.

## **CONCLUSION**

In this chapter the researcher summarised resolutions and collective agreements of the National ELRC and resolutions of the KZN Chamber which plays a role in dispute resolution and conflict transformation in KwaZulu Natal.

In the next chapter the researcher will identify the root causes of conflict in KZN between aggrieved educators (represented by Teacher Organizations) and the KZN DoE.

## *Chapter 4*

### CONFLICT IN EDUCATION IN KWAZULU-NATAL

#### **INTRODUCTION**

Having summarised the ELRC collective agreements and resolutions in the previous chapter, the researcher in this chapter assesses grievance handling and the arbitration procedures which are being used in education to resolve disputes and the process of arbitration and its success in resolving disputes. Grievances and disputes scope a vast area and a number of legislations.

The reader is alerted in advance that the summaries of grievances of educators in the KZN DoE presented here are formulated in the precise technical terminology that characterises grievances and disputes. However, one of the objectives of this chapter is to be as lucid and concise as possible, without sacrificing accuracy in the process.

#### **EDUCATORS' GRIEVANCES AND DISPUTES**

Grievances and disputes with unfair labour practices and rights, duties of educators and their relationship with the employer are not new phenomena. On the other hand there can be no doubt that since the democratisation of South Africa the rights of workers have contributed significantly to the escalation of conflict in education. The experience of the people during that era of South Africa with special reference to education determines how they react to change and how this change is communicated. Within the context of the KZN Education Department and educators we find conflict is endemic in this department from the Chief Executive Officer right down to the employees at a school where the core affect the desired education transformation.

What are the possible reasons or explanations that can be cited for this increase in conflict and its detriment on education transformation? This endemic conflict must be seen against the backdrop of the development of labour and education laws in South Africa and the political context of KwaZulu-Natal. Teachers are, after all, employees or workers and it is therefore expected that with the increase of statutory rights afforded to the workers in the Constitution South African, Act 108 of 1996 and the Labour Relations Act 66 of 1995 and the provisions of agencies for the enforcement of these rights more conflict will be evident.

The following print media reports provide a public window into the extent of disputes in the KZN DoE. They among others show that conflict in education does not only exist only between the DoE and Teacher Unions and their members, but also within the higher echelons of the KZN DoE.

According to the *Daily News* 05:03:2003 two top KZN education officials were suspended as fears and anxiety mounted over the manner in which a massive restructuring process is taking place. The two officials were suspended for raising concern about 15000 administrative employees being redeployed and were alleged to have incited staff. According to the *Daily News* source the two were not given a hearing before being suspended. The article added that a process initiated by the KwaZulu-Natal's Premier, Lionel Mtshali, researched and facilitated at a cost of several million rands by consultants, the DoE had begun halving the departments of 8 regions and slashing the provinces' 41 districts to 12 which aimed at improving service delivery.

According to the *Sunday Tribune* 10:10:2004 schooling plunged into turmoil on the eve of matric examinations following the shock suspension of the head of the province's Education

Department. According to the article, Charles Dlamini who was the former rector of the University of Zululand was appointed as the head of education by the former IFP premier Lionel Mtshali after the former ANC's chief whip Ina Cronje became the education minister after the ANC won the provincial elections in April. The article quoted Charles Dlamini stating that "Sbu Ndebele is trying to sort the alleged conflict between me and the MEC". In the same article SADTU's provincial spokesperson criticized the CEO's management skills, describing him as arrogant, having a bad profile and not being available on public platforms especially since the inauguration of the new political leadership. APEK's CEO in the same article stated it is obvious that all is not well in the top management and that something had to break at some stage.

Notwithstanding this general expectancy of increased conflict, the researcher would contend that there are special underlying factors and forces at work in KZN as indicated in articles in the previous paragraph and therefore educators are dismayed with the comparative depreciation of their status and salaries, have become increasingly disillusioned and more insistent on their full legal rights and show reluctance to do any additional voluntary work expected of educators.

Educators being a powerfully unionised group of workers and being more empowered in education law and practices than other sectors and their superiors are more willing to pursue precedent cases. Ironically while this is the case educators have the right to join the organisation of their choice and have the right to strike as a last resort in breaking dead lock as a commitment to the profession and the right of learners to education (Chapter 2: Bill of Rights Act 108 of 1996). The rationalisation in education and the cut back in staff utilising temporary educators has increased conflict in KwaZulu-Natal.

## **EDUCATORS AND THEIR EMPLOYMENT CONDITIONS**

### **Appointments of educators**

### **Promotions of educators, school based and office based**

Promotions of educators fall under the appointment of staff and is done by the combination of the previously stated legislation. However, the criteria and the procedures are clearly stipulated for school and office based staff according to Resolution 11 of 1997 of the chamber. Promotion posts in KZN are highly contested and are latently infested with grievances resulting in ELRC disputes ending in arbitration. In the summary of chamber resolutions it will be interesting to note that most disputes declared are promotion related and most of them arise from KwaZulu-Natal. Various reasons are sited for disputes in KZN between the DoE and Teacher Unions. The most frequently stated are indicated as the root causes for conflict in KwaZulu-Natal. These include poor capacity of school governing bodies, teacher organisation officials and DoE officials; politics, opposition to teacher organisations, promotions in itself; no clear direction; inefficiency; non implementation of legislation, unilateral decision making, laziness and ignorance, misunderstanding, flawed procedures and practices; bad faith negotiations; nepotism and mistrust to mention the most frequently given reason by the researchers' sample. According to the outcomes of the arbitration awards in 2003, most disputes arose from supercession of the first candidate on non arbitrary grounds.

Educators are appointed by a combination of legislation provided for in the following legislation: National Education Policy Act 27/1996 (NEPA), The Employment of Educators Act 76/1998 (EEA), South African Schools Act 84/96 (SASA) and Personnel Administrative Measures (PAM). This is generally a matter of the Department of Education (DoE) also known as the employer in consultation with teacher unions who are parties to the Education Labour Relations Council. This is achieved by an advertisement either by an open or closed



vacancy list with procedures and practices clearly laid down in the ELRC according to provision in the relevant legislation. Up to this point it appears to be flawless. However, the conflict arises when educators apply for vacancies at the different institutions located in different political locations. The context of these locations and the political affiliations of school governing bodies and the stereotyping of these governing bodies because of political affiliation and or race results in widespread conflict as indicated in the addenda “Summary of the ELRC Resolutions and ELRC Activities” as discerned in observations of the chamber meetings, union meetings of SADTU and arbitration of disputes.

### **Post provision norm (PPN)**

The post provisioning norm provides for the staffing establishments of all schools according to the number of learners in the province and the available income for staffing as budgeted in the Medium Term Expenditure Framework (MTEF). Funding plays the determining role in the learner teacher ratios of schools and requires accurate statistics of learners and teachers within the system. Due to the unavailability of accurate statistics the department has been unable to account for ghost learners and teachers and numerous irregularities since our democracy.

The politically strife infested province has until recently still not achieved or is moving towards equity at schools. Disputes on the Post Provisioning norm, is an annual debate resulting in cut backs even though there has been an increase in the education budget in KwaZulu-Natal. In the *Daily News* 15:04:2003 the Minister Of Education, Narend Singh, said the “the money for capital expenditure for this year is R450 million and for the next financial year R550 million – is there for putting things right, and he aims to do just that”, but the *Daily News* 26:11:2003 article “Shock at teachers’ cut” gave rise to a major staffing crisis in KwaZulu Natal.

According to the *Daily News* this crisis arose when the DoE released to school a revised post provisioning norm for 2004 and principals of schools indicated losses between one and three educators at most of the so called disadvantage schools. This clearly indicates the inherent chaotic nature of education in KZN with regards to the post provisioning in schools resulting in wide scale disruptions and delays which again results in replanning and crisis management at schools. This seriously hampers quality delivery at schools and impedes education transformation. It is clear therefore there has been no forward planning and implementation as the Chamber began with discussions on the PPN on 7 February 2003 with a PPN Committee Report highlighting concerns of placements of learners and teachers. The report from the employer also excluded a National Economic, Development and Labour Council (NEDLAC) agreement that every class must be provided with a teacher and this was contested by SADTU. SADTU further contended that 75000 posts were created while 62000 educators existed resulting in 13000 posts. Out of 13000 posts only 5000 posts were advertised leaving 8000 posts being unfilled due to the post not being advertised. The reasonable conclusion drawn here is that schools will have to do more with less hence education transformation being delayed by conflict in education. It is assumed the DoE is either incapable of handling the KwaZulu- Natal Education Department or it is in opposition to the education transformation agenda as outlined in education legislation.

## CONCLUSION

In this chapter the researcher summarised the endemic nature of conflict between DoE and teacher organisations, and aggrieved educators. The researcher presented areas of infestation of conflict in KZN which indicate that there is a struggle for political power and control in KZN because while it was a primary goals of the ANC to promote workers rights, learner's rights, education transformation and the implementation of national policy, these seemed to be

secondary goals for the IFP. In the next chapter the researcher enunciates general workers' rights in South Africa and presents findings of the observation of Chamber meetings, SADTU meetings and Arbitrations.

## *Chapter 5*

### OBSERVATION OF MEETINGS AND ARBITRATIONS IN PRACTICE

#### INTRODUCTION

In the first part of this chapter the researcher enunciates general workers' rights in South Africa under Section 23 of the Labour Relations Act 66 of 1995. In the second part of the chapter the researcher presents findings of observation of Chamber meetings, SADTU meetings and Arbitrations. A relatively detailed analysis is made of the categories of observations to give clarity to the procedures and practices mandated by the act.

#### TEACHERS' RIGHTS IN PRESENT-DAY SOUTH AFRICA

The teachers' union SADTU will be used as an example of how workers' unions function in present-day South Africa. As a union SADTU is nationally based with offices in all of South Africa's provinces, affiliated to the Confederation of South African Trade Unions (COSATU) and the International Labour (sic) Organization (ILO). SADTU is responsible for serving regions, branches and sites in the whole of the KZN province. As a labour organisation SADTU has constitutional rights in terms of The Constitution of South Africa, Act 108 of 1996, and Chapter 2 section 23 which applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. These rights scope workers who have labour rights and trade unions. These rights include the following but are not limited to them only:

According to Sect. 23 of the Labour Relations Act 66 of 1995:

- (1) Everyone has a right to fair labour practices
- (2) Every worker has a right-

- a. to form and join a trade union,
  - b. to participate in the activities and programmes of a trade union; and
  - c. strike
- (3) Every employer has the right-
- a. to form and join an employers' organisation; and
  - b. to participate in the activities and programmes of an employers' organisation
- (4) Every trade union and employer's organisation and employer has the right-
- a. to determine its own administration, programs and activities;
  - b. to organise; and
  - c. to form and join a federation.
- (5) Every trade union and employer's organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this chapter, the limitation must comply with section 36 (1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this chapter, the limitation must comply with section 36 (1) and the union has to fulfil the obligation of the Labour Relation Act 66 of 1995 to maintain labour peace.

#### **OBSERVATIONS OF SADTU MEETINGS**

Teacher unions are governed by their own constitutions duly adopted by its membership and decision making in all aspects by mandates communicated by their representatives of their constituencies. The meetings held by the teacher union SADTU is governed by the structure

of the union according to the constitution of the union. The structure of all meetings observed is bureaucratic in nature and lead by the union representatives either to provide feedback or solicit mandates for decision making at higher levels. The communication procedures are guided by general meeting procedures under much disciplined circumstances without negating the opportunity to raise questions, objections and to make proposals or counter proposals.

While the report back from leaders to membership is effective problems do arise as the Conflict Research Consortium, University of Colorado, (CRC) USA outlines that in *Constituent Communication Problems* where dialogue, negotiation, and consensus processes involve a relatively small number of people, who may be acting on behalf of a much larger constituency. As the small group works together over time, they often develop a level of understanding, trust, and an image of the problem that differs considerably from their constituents, who have not been involved in the small group process.

Then, when the representatives come back to their constituents with a proposal which seems reasonable to them (as they understand the constraints under which it was developed), the constituents may react very differently, because they don't have the understanding of the process or the substance of the ongoing discussions. (Some scholars refer to this as the "re-entry problem,"--negotiators or dialogue participants must "re-enter" their old groups, but when they do so they find they are not welcome, but rather are shunned, and their work denounced, not applauded.) Whist this dissatisfaction or an internal dispute emanates from the constituencies the response of this particular union the matter is traversed at great length until a resolution is taken that will be applauded. Klopper's (2002) theory of the Optimisation of Human Communication is clearly manifest the communication interactions which are forms of behaviour that range along the continuum: *cooperate > compete > confront*. SADTU's structure of

meetings proceed from cooperation where all members are moving towards achieving particular goals using all human resources, ideas, brainstorming, and breakaway sessions to arrive at the best solution to the advantage of the group. Competition for the best position of the group begins at a plenary or a feedback session where the different groups negotiate until the best position for the groups emanates in a resolution. However, on issues where consensus or the best position is reached the group confronts issues in a non violent way by voicing the constituents' positions until proposals are placed on the table and the groups are forced to restart negotiations to refine resolutions before a resolution that will be taken to address the groups' needs and in some cases not all constituencies get their way but have to live with the majorities' decision. Some interesting points to be noted is that once a resolution has been taken it is complied with even though constituency caucuses continue to dispute it while the implementing of the resolution does not threaten the group in any way. Time frames seem not hinder discussions as long as the group benefits. The senior leaders become part of the constituents' meetings to take discussion questions and clarifications on the resolutions which are addressed maturely and dispensed and should a matter not reflect their intentions and contentions the matter is stood down until broader consultation and the part of the meeting is adjourned to a suitable date. The intensity and expectation of meetings rises as leaders are represented higher up the hierarchy and the depth of the debate also increases utilising all sources of information obtained from the lower level.

#### **OBSERVATION OF THE PROVINCIAL CHAMBER OF THE ELRC FOR KZN**

The ELRC is governed by its constitution, is a juristic person and the registered scope is the state and those employees in respect of which the Educators' Employment Act 1994 as amended, applies. The ELRC constitution is a very detailed document and for the purposes of this research the researcher will outline objectives of the National ELRC and then discusses

Provincial Chambers in greater detail with areas of focus that will be relevant to this research topic.

### **Objectives of the ELRC**

Subject to the provisions of the Act, the objectives of the ELRC are as follows:

1. to maintain and promote labour peace in education;
2. to prevent and solve labour disputes in education;
3. to perform dispute resolution functions in terms of section 51 of the Labour Relations Act 66 of 1995 (LRA) as amended;
4. promote collective bargaining in relation to all matters of mutual interest;
5. to conclude and enforce collective agreements;
6. to conduct research, analyse and survey education nationally and internationally. And promote training and build capacity in education;
7. to develop proposals for submission to the Public Service Bargaining Council (PSCBC) and NEDLAC, or any other appropriate forum, on labour policy and labour legislation that may affect education;
8. to confer on workplace forums such as additional matters for consultation;
9. to determine by collective agreement the matters which may not be in dispute for the purpose of a strike or a lock-out; and
10. to consider and deal with any other matters that may affect interest of the parties.

### **The Provincial Chamber of the ELRC for KwaZulu-Natal**

According to Chapter 3 of the ELRC referred to in section 103 of the Constitution 108, 1996, it shall:



1. Establish a Provincial Chamber of the ELRC which shall be the bargaining or consultative forums in a specific province.
2. Chambers established in terms of clause 12(1) of the ELRC constitution shall not be a juristic person.

The Chamber shall function in a specific province and deal with matters referred to or delegated to the Chamber by the National ELRC, as well as matters which fall exclusively under its jurisdiction.

The objectives of the provincial Chamber are:

1. to maintain and promote labour peace in education;
2. to prevent and solve labour disputes in education;
3. to perform dispute resolution functions;
4. to promote collective bargaining within the scope of its powers;
5. to conduct research, analyse and survey education, subject to approval of the ELRC;
6. to promote training and build capacity;

### **Functions of the Chamber**

The functions of the Chamber will be:

1. to deal with such matters referred or delegated by the National ELRC;
2. to conclude agreements on matters pertaining only to that province; provided that no collective agreement concluded in a chamber may conflict with a collective agreement concluded in the ELRC;

3. to deal with matters emanating from the agreed dispute resolution procedure of the ELRC which falls within its competency;
4. to refer matters which fall outside its scope, which matters should be dealt with by the ELRC or PSCBC, to the General Secretary; and
5. to refer agreements reached within Chamber to the ELRC, for ratification in accordance with clause 5(8) of the ELRC constitution.

### **Parties to the Chamber**

Section 6 of the ELRC constitution referred to below is contained in Addendum C.

The parties to the Chamber shall be the employer and trade unions in the province, admitted to the ELRC in terms of provisions clause 6 of the ELRC constitution.

### **Meetings of the Chamber and their Committees**

#### 1. Meetings of the Chamber and their Committees

- The chambers shall meet at least 4 times per year, one of which shall be the Annual General Meeting (AGM), in the event the Secretary shall give 14 days written notice, or such shorter as agreed by all parties, setting out the time, date, venue and business to be transacted; provided that the AGM shall be held 30 days within the AGM of the ELRC.
- In respect of committees of the Chamber shall meet at least 4 times a year.

#### 2. Special Meetings

The secretary, upon written request shall call special meetings, by any party to the Chamber; provided that the Secretary shall consult, prior to the calling of such a meeting, with the parties to the Chamber.

#### 3. Notice of meeting

At least 14 days written notice shall be given or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted. It will be deemed that due notice had been given to a party, if notice of any meeting was given by:

- the Secretary of the Chamber serving notice on any representative of the party concerned;
- the posting of a registered letter containing the notice to the party, at any registered address; or
- telefaxing the notice to the office provided the telefax receipt shows that the notice had been transmitted to and received by the addressee.

#### 4. Quorum of Meeting

- a quorum of a meeting of the Chamber shall be those trade unions representing 50% + 1 and the employer; provided that proper notice has been given if within 30 minutes of the fixed time for any meeting, only one party on either side is present, the meeting shall not commence until 30 minutes have elapsed.
- If within a further 30 minutes after the 30 minutes referred to above of the time fixed for any meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week following; provided that notice of the adjourned meeting in the manner prescribed in 3 above, shall be given to all parties.

#### 5. Voting

- the employer has a collective vote of 50% which shall be exercised by its representatives and the admitted trade unions the other 50% collectively;
- the trade unions representatives shall vote on the basis of their vote weights as determined by the ELRC;

- the secretary shall act as the electoral officer.

## 6. Vote weight

The provisions of clause 10(7) of the ELRC constitution shall apply.

## 7. Meeting procedure

- unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed and dated by the Chairperson immediately after conformation thereof;
- unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation be submitted in writing as a prerequisite to any debate or decision in respect thereof;
- the chairperson shall rule on any procedural matters which are not regulated in the constitution of the ELRC;
- representatives and observers shall be entitled to attend meetings of the chamber but observers shall not take part of the debates or vote;
- a person who is not a representative may be allowed to address the chamber at the request of the chamber;
- every meeting of the chamber shall be conducted in private unless the chamber otherwise decides;
- the secretary shall keep minutes of the proceedings of the chamber in such a manner as decide by the chamber, and shall be forwarded by the secretary to all parties within a period of twenty days after the meeting.

## 8. Agreements of chambers

- agreements of chamber determined way by of voting shall be on the basis of a vote of the employer on the other side and majority vote of the trade unions on the other side;
- the provisions of 14(2) of the ELRC constitution shall apply with the necessary effect thereto.

### **Negotiation and dispute resolution procedures**

The researcher will outline the necessary content in respect to negotiation and dispute resolution which apply to all disputes that arise in the scope of the council.

### **Disputes of interest**

#### ***Negotiation procedures for parties to the ELRC on matters of mutual interest***

- any party may submit proposals for the conclusion of a collective agreement in the ELRC;
- within 7 days of the submission of the proposals the General Secretary must serve copies of the proposals on the parties of the ELRC
- the chairperson of the of the ELRC must call a meeting of the Executive Committee (EC) within 10 days of the General Secretary receiving the proposals;
- the EC must set up the agenda for the next meeting of the ELRC. Should the EC be in the view that some of the issues submitted to the council should not be included on the agenda the matter must be referred to the ELRC for a decision? The ELRC will decide whether these issues must be included in the agenda , or whether to refer them to the relevant forum;
- if a party does not agree with the decision of the ELRC with regards to the exclusion, or the inclusion, of the item on the agenda, the party may refer the matter to the Dispute Resolution Committee (DRC) established in terms of section 38(1) of the Act;

- at the first meeting of the ELRC , the ELRC must try to agree on a negotiation process which may include the following issues:
  - the submission of counter proposals;
  - the establishment of the negotiation committee;
  - the appointment of a conciliator, to facilitate the meetings and chair the meetings; and
  - the time table for negotiations.
  
- in the event of the ELRC not agreeing on a negotiation procedure, the parties must, within two days commence negotiations in the ELRC;
  
- if the parties do not conclude a collective agreement by the expiry of 30 days after the matter was included in the agenda, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute;
  
- subject to clause 14(1)(f) of the ELRC constitution if any one of the parties declares a dispute the General Secretary must appoint a Conciliator and convene a dispute meeting which the Conciliator must conciliate. If the dispute is not settled at the meeting, the Conciliator must try to get agreement on:
  - further conciliation of the meetings to settle the dispute;
  - the referral of the dispute to voluntary arbitration; and
  - if the dispute must be referred to arbitration, the appointment of the Arbitrator.
  
- if no collective agreement exists the Conciliator must try to get agreement on:
  - rules of conduct of a strike or lockout, if applicable; and

- picket rules, if applicable
- if the dispute is not settled, the parties may exercise their rights in terms of the Labour Relations Act 66 of 1995;
- at least one of the parties must give seven days notice to the ELRC of a strike or lockout;
- any employee party who refers a dispute to the ELRC that concerns unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 14(1)(h) in the ELRC constitution:
  - require the employer not to implement unilaterally change to terms and conditions of employment; or
  - if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
  - the employer must comply with this requirement.
- If the dispute must be referred to arbitration, the procedure in clause 16(2) of the ELRC applies.

#### **Negotiating procedure for parties to Chamber on matters of mutual interest**

- any party to a Chamber may submit proposals for the conclusion of a collective agreement in a Chamber;
- within 7 days of the submission of the proposals, the Secretary of the Chamber must serve copies of the proposal on the parties of the ELRC;
- at the first meeting of the Chamber after the submission of the proposals, the chamber must try to agree on the negotiating process and timetable;

- in the event of the Chamber not agreeing to a negotiating procedure, parties must within 2 days, commence negotiations in the Chamber;
- if the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Chamber, which period may be extended by agreement between the parties to the disputes, any party may declare a dispute;
- the provisions of clauses 14(1)(i) to 14(1)(n) apply with the necessary changes required by the context.

### **Disputes of right**

- In this clause, a *dispute means any dispute, other than a mutual interest dispute* contemplated in clause 14, of the ELRC constitution that must be referred to the ELRC for:
  - conciliation;
  - arbitration; or
  - conciliation and arbitration
    - if the dispute is one that is contemplated in terms of 15(1)(a), the conciliation procedure contained in 16(1) applies;
    - if the dispute is one that is contemplated in terms of 15(1)(b), the procedure contained in 16(2) applies;



- if the dispute is one that is contemplated in terms of 15(1)(c), the procedure contained in 16(3) applies;

### **Conciliation and arbitration procedures**

- subject to clause 16(1)(b) a party may refer a dispute as contemplated in clauses 15(1)(a) and 15(2) in writing, on appropriate forms prescribed by the ELRC, to the General Secretary for conciliation of a dispute;
- the referral must be made within 45 days of becoming aware of the dispute, subject to the proviso that a party may not refer a Schedule 7 item 2(1)(a) unfair labour practice dispute before invoking the grievance procedure and allowing at least 30 days for resolution thereof;
- the party who refers a dispute to the ELRC must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute;
- in the event Schedule 7 item (2)(1)(a) unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral;
- if the General Secretary is satisfied that the dispute is a dispute in terms the ELRC Constitution and the referral has been properly

served, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:

- appoint a conciliator to attempt to resolve the dispute through conciliation within 45 days of the date of registration;
- decide the date, time and venue of the conciliation; and
- notify the parties to the dispute of these details.
- if the parties to a dispute have agreed on particular conciliator, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within the 45 day period or any agreed period. If the parties do not agree upon a conciliator the General Secretary shall appoint the conciliator;
- the conciliator appointed to conciliate the dispute must determine process to attempt to resolve the dispute which may include:
  - mediating the dispute;
  - conducting a fact-finding exercise
  - making a recommendation to the parties; which may in the form of an advisory award; and
  - arbitrating the dispute immediately if parties request the conciliator, in writing on a prescribed to do so.

- in a conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer;
- if a party to a dispute fails to appear in person or to be represented at conciliation, the conciliator may:
  - *dismiss the matter;*
  - continue the conciliation in the absence of the party; or
  - adjourn the conciliation to a later date.
- at the conclusion of the conciliation, the Conciliator must either:
  - *draw up a written agreement between the parties if the dispute is resolved, which must be signed by both parties and witnessed by the Conciliator;*
  - issue the parties with a copy of the "Outcome Form for a dispute referred to the ELRC for conciliation" if the dispute remains unresolved, and
  - issue the General Secretary of the ELRC; not later than 2 ordinary days thereof, with the original documents, as require by section 16 (1) of the ELRC constitution, or
  - if the parties requested the Conciliator to arbitrate the dispute, having had regard to the ELRC's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of the conclusion of proceedings or as soon thereafter as possible.

#### **Arbitrations by the council**

- subject to clause 16(2)(b) of the ELRC constitution, a party to a dispute, as contemplated in clauses 15(1)(b) and 15(3) may refer the dispute, in writing to on the appropriate forms as prescribed by the ELRC, to the General Secretary for arbitration of the dispute;

- the referral must be made within 45 days of becoming aware of the dispute;
- the party who refers the dispute to the ELRC must satisfy the General Secretary that the copy of the referral form has been served on all other parties to the dispute;
- if the parties to a dispute have agreed on an arbitrator or arbitrators, the General Secretary must appoint the person or person agreed upon. The onus on reaching an agreement about who is to be the arbitrator rests with the parties.
- should the parties not agree on the arbitrator within 10 days of the date of registration of the dispute, the General Secretary shall appoint the arbitrator;
- if the General Secretary is satisfied that the dispute is a dispute in terms the ELRC constitution and the referral has been made properly the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
  - appoint an arbitrator or arbitrators to arbitrate the dispute,
  - set the matter down for arbitration within 45 days of the registration of the dispute.
- the General Secretary must decide the time, date and venue of the arbitration hearing meeting and must notify parties to the dispute;
- the arbitrator may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation;
- the arbitrator appointed to arbitrate in the dispute must decide the procedure in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice;

- in any arbitration proceedings, a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer; the employer may be represented by a designate employee of the employer and/or by a legal practitioner.
- if a party to a dispute fails to appear in person or to be represented at arbitration, the Arbitrator may:
  - dismiss the matter;
  - continue the arbitration in the absence of the party; or
  - adjourn the arbitration to a later date.
- Within 14 days of the conclusion of the arbitration proceedings:
  - The arbitrator/s must, having regard to the ELRC 's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator/s as the case may be;
  - The General Secretary must serve a copy of the award on each party to the dispute;
  - The General Secretary may on good cause, extend the period within which the arbitration award written and issued and the reasons for such, are to be filled.

#### **Conciliation and arbitration by the council**

- subject to clause 16 (3)(b) a party to a dispute, as contemplated in clauses 15(1)(c) an 15(4) may refer the dispute in writing, on the appropriate forms as prescribed by the ELRC, to the General Secretary for conciliation and arbitration of that dispute;

- the referral must be made within 90 days of becoming aware of the dispute, subject to the proviso that a party may not refer a dispute, except a dismissal dispute, before invoking the grievance procedure and allowing at least 30 days for resolution thereof;
- notwithstanding clause 16(3)(b), a dispute about a dismissal must reach the General Secretary within 45 days of the employer being informed of the dismissal;
- the party who refers the dispute must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute;
- the party who refers the dispute other than a dismissal dispute, must satisfy the General Secretary that the grievance procedure was invoked 30 days prior to the referral;
- if the General Secretary is satisfied that the dispute is a dispute in terms of the ELRC constitution and that the referral has been properly served, the General Secretary must register the dispute, by recording it in the Dispute Register, and thereafter:
  - appoint an arbitrator;
  - set the matter down for arbitration within 45 days of registering the dispute;
  - appoint a conciliator; and
  - set the matter down for conciliation no less than 14 days before the arbitration.
- the General Secretary may appoint the same person to conciliate and arbitrate the dispute if that person is a member of both panels appointed in terms of clause 16(6);

- The timeframes referred to in clauses 16(3) (b) and (c) may be extended by the General Secretary, where there is a successful condonation application relating to the late referral.

### Conciliation

- the conciliator appointed to conciliate the dispute must determine process to attempt to resolve the dispute which may include:
  - mediating the dispute;
  - conducting a fact-finding exercise
  - making a recommendation to the parties; which may in the form of an advisory award; and
  - arbitrating the dispute immediately if parties request the conciliator, in writing on a prescribed to do so.
- in a conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer;
- if a party to a dispute fails to appear in person or to be represented at conciliation, the conciliator may:
  - dismiss the matter;
  - continue the conciliation in the absence of the party; or
  - adjourn the conciliation to a later date.
- at the conclusion of the conciliation, the Conciliator must either:
  - draw up a written agreement between the parties if the dispute is resolved, which must be signed by both parties and witnessed by the Conciliator; or

- issue the parties with a copy of the “Outcome Form for a dispute referred to the ELRC for conciliation” if the dispute remains unresolved, and
  - issue the General Secretary of the ELRC; not later than 2 ordinary days thereof, with the original documents, as require by section 16 (3) (1)(i)(iv) of the ELRC constitution, or
  - if the parties agrees in writing to immediate arbitration in terms of clauses 16(3)(i)(iv) having regards to the councils policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings and must be signed by the conciliator/arbitrator.
- in the event of immediate arbitration, the General Secretary must, within 14 days of conclusion of the proceedings or as soon as possible thereafter, serve copies of the award on the parties;
  - if the dispute remains unresolved at the end of conciliation, the referring party must indicate in writing within 4 working days, on appropriate forms prescribed by the ELRC, that the scheduled arbitration must proceed. The “Outcome Form for a Dispute referred to the ELRC for Conciliation”, referred to in clause 16(3)(1)(ii), must be attached to the application for arbitration.

### **Arbitration**

- in respect of pre-arbitration pleadings, the onus rests with the parties to address this matter, prior to the date already scheduled for arbitration, of the said dispute;
- the arbitrator may, should it be agreed upon by all parties to the disputes, attempt to resolve the dispute through conciliation;
- the arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with the minimum of legal formalities. The procedure must be in accordance to rules of natural justice;



- subject to clause 16(3)(s) in the ELRC constitution, in these arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or legal practitioner;
- if the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the educator's conduct or capacity, the parties, dispute clause 16(3)(t) in the ELRC constitution, are not entitled to be represented by legal practitioner in these arbitration proceedings unless:
  - the arbitrator and all the other parties consent; or
  - the arbitrator concludes that it is unreasonable to expect the party to deal with the dispute without legal representation, after considering:
    - the nature of the questions of law raised by the dispute;
    - the complexity of the dispute;
    - the public interest; and
    - the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
- if a party to a dispute fails to appear in person or to be represented at arbitration proceeding the arbitrator may:
  - dismiss the matter;
  - continue the arbitration proceeding in the absence of the party;
  - or
  - adjourn the arbitration proceeding to a later date.

- Within 14 days of the conclusion of the arbitration proceedings:
  - The arbitrator/s must, having regard to the ELRC 's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator/s as the case may be;
  - The General Secretary must serve a copy of the award on each party to the dispute;
  - The General Secretary may on good cause, extend the period within which the arbitration award written and issued and the reasons for such, are to be filled.

#### **Recording of conciliation and arbitration proceedings**

- the ELRC will not provide any recordings facilities at conciliation or its related activities;
- subject to clause 16(4)(c), the ELRC shall, upon request, provide mechanical recording facilities, at the cost of the ELRC, for arbitration proceedings;
- the General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in ELRC;
- the ELRC will not provide any transcripts of such recordings, unless the requesting party is willing to cover the costs of the ELRC related to the production of such transcripts;
- the mechanical recordings and transcript shall be the property of the ELRC;
- the ELRC reserves the right to destroy the recordings after the 180 days referred to in clause 16(4) (e).

## **Costs**

- subject to clause 16(5)(b), the ELRC will pay the costs of the conciliator's and arbitrator's proceedings in terms of the ELRC policy;
- if the arbitrator finds that a dismissal is procedurally unfair the arbitrator may charge the employer an arbitration fee;
- each party to the dispute must pay his own cost with regards to travel, meals, legal representation (if applicable) and other related expenses;
- if the arbitrator is satisfied that party has acted unreasonably, wasted costs, or referred the dispute to arbitration without reasonable cause, the arbitrator may on application by either party or council make an appropriate order for costs, including the costs of the arbitration;
- costs awarded by the arbitrator may include:
  - the costs of the arbitration;
  - legal and professional costs and disbursements;
  - other expenses which a party has incurred in the conduct of the dispute;  
and
  - expenses of witnesses.

## **Panels of conciliations and arbitrators**

- subject to the Labour Relations Act 66 of 1995 the ELRC may, at any of its meeting, for a period of one year at a time, appoint, from nominations received from the parties:
  - a panel of conciliators to conciliate disputes;
  - a panel of arbitrators to arbitrate disputes.

- in making these appointments the ELRC must ensure that the panels:
  - are drawn from each of the nine provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of educators employed in the national and provincial departments in various province;
  - have skill and experience in labour relations, knowledge of the education sector and knowledge or experience in conciliation and arbitration;
  - are broadly representative of South African Society.
- all conciliators and arbitrators will conduct themselves in ordinance with the Code of Conduct Schedule 1 of the ELRC constitution;
- the ELRC may remove a member of the panels from office because of incapacity;
- if for any reason there is a vacancy in the panel the ELRC may, subject to the Labour Relations Act 66 of 1995 appoint a new member to the relevant panel for the unexpected term of office;
- a member of the panel, who term of office expires, may be eligible for reappointment;
- if the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the CCMA, who must appoint a suitable qualified person to fill the vacancy.

#### **Extension of time periods and condonation**

- the ELRC may require the referring party to set out in writing, on the appropriate forms as prescribed by the ELRC, the application for condonation of a late referral of a dispute;

- any late referral or application may be condoned on good cause shown by an arbitrator appointed for that purpose. Such an arbitrator must be appointed by the General Secretary from the agreed panel of the arbitrators;
- notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolutions of any disputes;
- if a party does not comply with the time frames set in the ELRC constitution because it is involved in resolving the matter through the grievance procedures, then this will constitute good cause for condonation;
- an arbitrator adjudicating a condonation application must determine the application, as far as it is reasonably possible, by means of written submissions from the parties.

#### **Strikes, lock-outs, picketing and protest action**

- every employee has right to strike and every employer has resource to lock-out if:
  - the issue in dispute has been referred to the ELRC;
  - the ELRC has issued a certificate stating the dispute remains unresolved, or a period of thirty days, which may be extended by agreement, as lapsed, since the referral was received by the ELRC; and
  - 7 days notice of the commencement of the strike or lock-out has been given to the employer or the trade unions, as the case may be, and the ELRC.
- Parties shall comply with the code/s of practice as provided for by the Labour Relations Act 66 of 1995 or as contained in any collective agreement.

The KZN Provincial Chamber of the ELRC herein after referred to as the “Chamber” is governed by the constitution of the ELRC outlined above with relevant sections for easy reference. Much of the information has been stated very much in the same content since a summary will not illustrate the true legal nature of the ELRC constitution. Whilst the ELRC

constitution is presented for easy reference it is not given in the format of the actual ELRC constitution and will make reference to “clause of the ELRC constitution” in the above outline. A chamber is established by the ELRC in each of the nine provinces according to provisions made in section 103 of the South African Constitution, Act 108 of 1996 and has specific objectives and functions as outlined in the ELRC constitution chapter 3 sections 12(4) and (5).

The KZN provincial chamber is a bargaining or consultative forum for the parties of the province. The parties to the chamber are the KZN DoE and the teachers’ unions namely SADTU, APEK, NATU and SAOU which have voting powers 50% to the DoE and 50% of the admitted teachers unions to the chamber according to section 10(7) of the ELRC Constitution. The vote weight is determined by the monthly PERSAL remittances for the end of December of the previous year. This weighting is extremely important as it determines power or the balance of power and the ability to carry a particular motion or not.

In order to have an observational understanding of chamber meetings the types of meeting will be explained briefly. According to the ELRC constitution clause 10(1) to (9) meetings of the chamber and its committees must meet at least 4 times a year of which one must be the AGM. Chamber meetings carry a mandatory notice period of 14 days for general meetings and 30 days notice for the AGM. In addition a special chamber meeting can be called by either party provided the secretary of the chamber consults with the other parties prior to the calling of the meeting. Meetings of the chamber are called by a notice by means of the secretary serving notice to a representative by post or telefax and by now should include electronic communication that sets out date, time and venue and the business to be transacted. The meeting of the chamber must be quorate by 50%+1 and the employer. The observation of the

KZN chamber was initially rejected by chamber but was facilitated by SADTU through their delegation to the chamber which gave rise to interesting observations.

The nature of meeting of the ELRC as observed is bureaucratic in nature which clearly and rigidly follows the ELRC constitution as stated under clause 10 under meetings of the Chambers and their Committees with the employer having the responsibility to chair the Chamber meeting. The meetings are mechanically recorded by the secretary but for exclusive use of the Provincial Chamber. The purpose of the meetings is to traverse input on proposals presented by the chamber by whichever party according to an agenda that has been agreed upon by all parties. It will be interesting to note that the minutes of the meeting follow a particular chronology and are presented in a summarised legal format indicating the following:

- Details of meeting – Date, time , Venue
- Welcome
- Attendance and Arrangements
- Apologies
- Adoption of agenda
- Adoption of minutes of previous meeting
- Matters arising (Generally carries the bulk of the meeting time)
- New matters- Areas of conflict, matters for ratification, discussion of ELRC collective agreements and resolutions
- Date of next meeting

- Signing of resolutions if any
- Closure

The observation of the chamber and the minutes raises the question of the effectiveness of the chamber as a bargaining or consultative forum if matters from previous meeting are frequently repeated and little or no consensus is reached on matters discussed. The issue of staffing, promotions, skills development and the PPN indicated in chapter 4 on the Conflict in Education in KZN needs deeper investigation.

### **APPLYING BOJE, KLOPPER AND MOODLEY'S INSIGHTS TO CURRENT KZN DOE**

#### **DISPUTE RESOLUTION**

When using Boje's (2001:5) storytelling research methodology illustrates that the KZN Chamber minutes and resolutions are narratives that require plot which he explains as "people doing things to one another" and coherence as explained by Boje "in a form of an interrelated set of events that proceed from a tensioned-filled unsettling event to the final restoration of peace and quiet among the participants". The observation of the Chamber meeting illustrates an *antenarrative* which Boje characterise as fragmented, non-linear, incoherent, collective, unplotted, polyphonic improper storytelling and a pre-narrative speculation, a bet or wager from which a proper narrative can be constructed.

In this respect the bargaining that takes place in the KZN Education Labour Relations Chamber (KZN ELRC) is story and the resolutions, minutes and resolutions are narratives that are given plot and coherence to the expectation of governing legislations not an indication of the polyphonic nature of the debate in the KZN Chamber.



KZN Chamber consists of such polyphonic parties that have different ideologies and mindsets. On the one hand the employer carrying the ideology of the Inkatha Freedom Party and the on the other hand the teacher unions are unique and their affiliations differ. The teacher unions have their own stories to tell as their affiliations influence their voting on decisions in the chamber. It is the researcher's assumption that resolutions seem to take a long time to be reached because in a deeper analysis the alliances and adversaries seem to be in opposition and the chamber agreement is a win/lose arrangement.

A possible scenario of the alliances would be that SADTU is more in line with the national policies and collective agreements as it carries the ruling parties' ideology and NATU, is pro KZN policies and resolutions, as it carry the ideology of the more dominant ruling party in the province. This leaves the smaller teacher unions like APEK and SAOU to perhaps give their support to other parties that are in opposition or their alliances could be the assumed by the two rival groups.

Boje's (2001:5) antenarrative theory, in which he refers to the "postmodern and chaotic soup of storytelling", is difficult to apply to dispute narrative on its own because stories that individuals tell in organizational contexts in Boje's words are "self-deconstructing, flowing, emerging, networking and not at all static." When one however applies Klopper's (2003b:278) proposal that human interactions take place according to a three-phase compliance-gaining *cooperate* ⇨ *compete* ⇨ *confront* continuum to Boje's work, Boje's ideas about storytelling become much clearer.

Klopper (2003a:3) states that reduced to its essence, communication is a contested meeting of minds, where fellow communicators cooperate, compete or confront one another to clearly

convey their intentions and contentions. To achieve such a meeting of minds one simultaneously has to engage in intrapersonal and interpersonal communication.

Klopper (2003a:4) points out that effective communicators have to be good at all three of these to get along with others in their groups, to realise their best potential in their groups, to withstand rank challenges within their groups, ethnic, racial political and other problems to contribute to the betterment of their groups, and to help survive the hostile intentions of competing groups. Klopper's observations about the generic roles that conflicttees have of themselves as either sole, agents, co-agents, counter-agents or patients, cogently explain the deep semantics that give coherence to antenarratives as well as narratives, I the researcher will point out in the section on arbitration below. Suffice to say at this stage, the implications of Klopper's continuum is that negotiation is the most successful if it can be conducted by co-agents in terms of persuasive objectives, and that negotiations between counter-agents have to be stated in terms of clear competitive objectives otherwise they will degenerate into confrontation. Klopper's continuum also makes it possible to reconceptualise confrontations as *rule-governed competitive negotiations*.

Another important issue during negotiation is how conflicttees stereotype one another. According to Moodley (2001:23), whether people are aware of it, they all hold beliefs about social groupings, and these beliefs influence their interactions with people. Tension between members of different cultures often manifests itself in the form of stereotypical thinking and beliefs about oneself, one's group, other individuals and the groups that they belong to. As Moodley states above stereotypical thinking exists within the KZN Chamber and contributes to the resistance to speedy resolutions as giving in to a quick resolution is a set back for either alliance and hence the conflict in KZNC is endemic between the rival groups.

Stereotypes incorporate general knowledge about groups and play an important role in our evaluation of our own groups and critically, in our evaluation of other groups. Stereotypical judgments thus play a critical role in inter-ethnic relations and inter-ethnic assessment.

Moodley (2001:23) avers that stereotypes are a fundamental element of discrimination and discriminatory attitudes towards other groups and the South African constitution espouses freedom and equality but the current everyday tensions of political, social and economic imbalances are still carried through to the classrooms. My assumption is the same scenario exists within our KZNC among the parties. As Moodley explains there is an appearance of, a semblance of trying to enforce equality but rigid stereotyping is still evident in the day-to-day interactions of the different groups.

Moodley's (2001:23) proposal that constitutional and legal change has not filtered down to the individual level as mindsets and stereotypical beliefs have not changed suggests that a paradigm is expected from parties of the KZNC to change perceptions of each other for effective communication to take place with the Chamber.

#### **ARBITRATION**

Arbitration proceedings between the teacher unions and aggrieved educators as provided for in the ELRC Constitution follows the procedures and practices set out in the said constitution. Disputes declared at the ELRC follow particular time frames and should ideally be concluded within these specific time frames. The arbitrator must determine the procedure to be followed in the arbitration in order to expedite or resolve the dispute as fairly and quickly as possible and must deal with the merits of the case with as minimal legal formalities as possible. All procedure and practices in arbitration must be in accordance to natural justice.

### **Agents and patients in negotiation and arbitration**

The implications of Klopper (2003b)'s compliance gaining continuum is that negotiation is the most successful if it can be conducted by cooperative agents in terms of persuasive objectives, and that confrontations between counter-agents have to be restated in terms of clear competitive objectives before negotiation can take place without escalating to the level of confrontation.

In Klopper's terms, co-agents envisage a scenario where all conflicttees emerge as winners. A co-agent will use mindful and respectful modes of communication as pointed out to minimise confrontation while at the same time optimising compliance. During mindful, respectful communication participants will have persuasive objectives, and issues that could lead to confrontation would be restarted in terms of clear competitive objectives. Where possible, issues that are subject to negotiation should be framed in terms of cooperative objectives that emphasise common ground and equal positive outcomes for both negotiating parties. In Klopper's terms, arbitration is a losing strategy for both groups of conflicttees, because when they enter into arbitration proceedings they are no longer agents, but have in effect become patients – parties depend on the agency of the arbitrator by whose decisions they are compelled to abide because by subjecting themselves to arbitration they have ceded their rights to actively negotiate further and on their own behalf.

Provision in the ELRC constitution provide for an aggrieved party to first resolve the grievance within the internal grievance procedure to cooperate and or negotiate first and should the grievance still remain unresolved the dispute may than be registered in the ELRC which provides conciliation as the second step to restart cooperation and negotiation. At conciliation the parties to the disputes are considered to be making an attempt for the second

time to restart negotiations. Within the arbitration context the implication of Klopper's theory gives parties the opportunity to be both parties as winners.

### **Observation of arbitration proceedings in KwaZulu-Natal**

As indicated earlier in this section of arbitration the process of arbitration causes parties to cede their right to negotiate and leaves the arbitrator as the decider of the outcome of the conflict which is awarded to one of the parties. This results in various other complications as the winner of the dispute in many cases has to work in the same environment which results into other forms of conflict whilst the root cause of the conflict still lies within the arbitration award which could be averted if the parties could have reconceptualised the conflict.

Moodley (2001:23) asserts that in stereotyping individuals are valued on their own merit but are judged on a prejudicial value judgement directed at a group they belong to. These assumptions could contain naïvely positive or naïvely negative assumptions. With regard to parties to a dispute at arbitration the parties they are confrontational who tend to prejudice one another. This was evident in the KZN arbitration proceedings.

Wela (2001:3) analyses how language encodes emotion and what role emotion plays during negotiation. Wela reviews canonical literature on the nature of human emotions, and comes to the conclusion that there are no empirical grounds to identify a set number of emotions. According to him it is more appropriate to distinguish particular mind-body states during which people experience subjective awareness that they term "emotions." Wela then goes on to show that emotive awareness is so fundamental to humans that all language structures are involved in the encoding of emotive awareness. Wela applies the insights that he reports *regarding emotive encoding in language to the process of conflict transformation.*

During arbitration proceedings the listener is in an adversarial and probably hostile frame of mind, and encourages them to disregard or dispute anything that is said as arbitration is a confrontational mode of communication. Crises are likely to be further complicated by the increased levels of fear, anger, and hostility which are increased during confrontation as allegations are presented or when allegations are proved to be true.

Inflammatory statements and personal attacks are two of the most common causes of conflict escalation and have been evident during arbitration proceedings where the arbitrators had to stand down proceedings to allow parties time to cool off. When people attack other people verbally, those attacked are likely to get especially defensive or angry-much more than they would have had their opponents kept their statements impersonal and focused on the problem.

The CRC uses this example, to illustrate when people are told they, personally, are at fault for a particular situation, or that they are evil or stupid for believing something or advocating a particular action, the person attacked is likely to respond in a very negative way. They are much more likely to dig in their heels and stand firm, refusing to listen or find counter statements. In arbitrations it has also been observed as this is used as a strategy to cloud areas of presentation or to frustrate the process. Most often these parties are called to order.

The arbitration hearing is similar to a court case and is bureaucratic in nature but less legalistic and is more flexible. The arbitrators are mainly there to deal with the merits of the case and make a ruling. What has been observed is that in the case of the parties the DoE fails to conciliate as political appointments and or decisions are defended at all costs and that the respondent on behalf of the department has no latitude to engage in the negotiations as their

mandate from the bureaucracy does not allow them hence, the conciliator rules in most cases and the matter remains unresolved. The matter proceeds to arbitration leaving the parties impatient in the process. At arbitration level when arbitrators see that the parties have merits on both sides and ask parties to re-enter into conciliations, the DoE refuses and goes into arbitration using legalities, technicalities and matters of law as their resources that allow them such privileges leaving union officials who are teachers frustrated in these positions with little or no experience in law. This escalates tension leaving disputes at arbitration unresolved for long periods. Delaying tactics like calling long lists of insignificant witnesses, adjournments for unavailability of DoE officials and witnesses are used at a huge cost to the state. The DoE has clearly adopted a high risk confrontation stance for a win/lose outcome hence making the arbitration process a battle field to fight political battles to keep power and control in the province.

## CONCLUSION

In this chapter the researcher reported findings on the observation of meetings of the KZN Chamber, SADTU meetings and arbitration proceedings. It is evident that there are clear *political undertones within the rank and file of the KZN DoE and there appears to be anti-transformation agents within the parties to disputes as the dispute resolution procedures of the ELRC has provided for renegotiation loops along the dispute resolution process. The KZN DoE and parties to the chamber are embroiled in a political “tug – O – war” on whether transformation takes place or not. It also became clear that certain parties are on the “cheer-leading” on the wrong side of the “tug-O-war” giving support to anti-transformation as it would mean that the ruling party of the country has failed to deliver and thereby gaining political favour, power and control in the province by window dressing.*

In the next chapter the researcher explains how he conducted the fieldwork for this project, and how he analysed the collected data.



FIELDWORK AND DATA PROCESSING

**INTRODUCTION**

In this chapter the researcher explains how he conducted the fieldwork for this project, and how he analysed the collected data.

**MODES OF DATA ANALYSIS**

In this section the researcher explains how he used a combination of SPSS 11.5, and a method of analysis known as the concept matrix (Rugbeer 2004). SPSS was used to analyse the demographic particulars of respondents, and to correlate those with particular perceptions that they expressed. Where data was elicited by means of open ended questions, a series of concept matrices were used to analyse the subjective responses of the recipients.

***Observation***

Fieldwork will begin with the first available appointment which was received with resistance by the Department of Education. The fieldwork was characterized by antagonism as some chamber parties were uncomfortable with the idea of a free entry to the ELRC for observation. However, they were willing to exceed if one of the parties were willing to be brought in as part of their delegates.

The researcher's promoter immediately facilitated meeting with the SADTU who, was the only organization willing to accommodate the research and saw the value of the research. SADTU was willing to assist with allowing me to accompany their Labour Relations Officers to arbitrations provided that there were no objections from parties to the arbitration.

SADTU granted me written permission to observe them in practice. This facilitated my actual fieldwork and to attend an ELRC meeting as a delegate. Due to the opposition of other organizations and the KZN DoE we adapted the research to include the semi-structured interview schedule.

#### **INTERVIEWS WITH REPRESENTATIVES FROM THE DoE AND THE TEACHER UNIONS**

Interview schedules were used to ensure that the same questions were put to each of the 18 interviewees. Eight were respondents on behalf of the KZN DoE, and nine were officials from the Teacher Unions who represented the disputants (the aggrieved educators) and one from the Education Labour Relations Council. During each interview the answers of each interviewee were noted on their particular copy of the interview schedule. An example of the interview schedule is available under addendum 1.

The interviews were conducted by telephoning DoE officials and teacher organisation officials to make appointments. During the interview process it was extremely difficult to get interviews as the researcher could only work after hours and most interviewees especially department officials gave me a run about and long waits before interviews could take place. No interviews materialised with Natal Teachers Union (NATU) even though the researcher's promoter made a second and final appeal to NATU to no avail and hence could not be part of the sample. Telephonic appointments were made but some officials were late or just did not show up or make the interviews. The researcher targeted a sample of 20 but was only able to obtain 18 interviews schedules. Thirteen interviews were conducted and five were more comfortable doing a narrative report on the schedule.

## SETTING UP SPSS

In SPSS 11.5 the variable mode was used to set up the coding parameters so that the appropriate responses of each interviewee could be entered for analysis in the data mode. In the variable mode each of the research questions is entered and associated with the appropriate numeric equivalents for each response option indicated on the interview schedule. After the coding parameters had been set up in the variable mode, the full set of responses for each respondent were entered in the data mode.

## OBTAINING TABLES AND GRAPHS IN SPSS

After the data for each respondent had been entered, the analysis function of SPSS was used to generate general tables from which bar graphs were derived where necessary.

## THE USE OF CONCEPT MATRICES

The interview schedule contained a number of open ended questions that allowed the interviewees the freedom of subjective personal responses. Because it is difficult to encode such responses on a statistical program, concept matrices were used to do a semantic analysis of common themes and individual responses for each of the interviewees. A concept matrix from Rugbeer (2004) is provided below as example:

	mislead	deceive	rob	pretend	hide/ conceal	Intentional action	disguise	Personal advantage
beguile	✓	✓	✓	✓		✓	✓	✓
bluff	✓	✓	✓	✓	✓	✓	✓	✓
camouflage	✓	✓		✓	✓	✓	✓	✓
cheat	✓	✓	✓		✓	✓	✓	✓
conceal		✓		✓	✓	✓	✓	✓
confuse	✓	✓			✓	✓	✓	✓
confound	✓			✓	✓	✓	✓	✓
deceive	✓		✓	✓	✓	✓	✓	✓
disguise	✓	✓	✓	✓	✓	✓		✓
distort	✓	✓	✓			✓	✓	✓
dupe	✓	✓	✓	✓	✓	✓	✓	✓
exaggerate	✓	✓		✓		✓	✓	✓
feint	✓	✓		✓	✓	✓	✓	✓
fool	✓	✓	✓	✓	✓	✓	✓	✓
hoodwink	✓	✓	✓	✓	✓	✓	✓	✓
lie	✓	✓	✓	✓	✓	✓	✓	✓
misguide	✓	✓	✓	✓	✓	✓	✓	✓

mislead		✓	✓	✓	✓	✓	✓	✓
misrepresent	✓	✓	✓	✓	✓	✓	✓	✓
pretend	✓	✓			✓	✓	✓	✓
trick	✓	✓	✓	✓	✓	✓	✓	✓
Concept Matrix presented as Figure 7 in Rugbeer (2004)								

In the concept matrix above, Rugbeer (2004) presents correlations between the various deception strategies. An analysis of the matrix reveals that most deception strategies are deliberate, with an intention to mislead and are used for personal gain. The intention of the communicator is to deceive, create a false impression, and make a false claim, to confuse and to lead the listener in a wrong direction. Concept matrices like the example above, allow one to closely compare related but slightly differing information. In this dissertation they will be used to compare the responses of teacher union officials and departmental officials to the open ended questions that the researcher put to them during personal interviews. (The questions can be found on each matrix as well as in the interview schedule under addendum B).

## CONCLUSION

In this chapter, the researcher discussed how the researcher conducted fieldwork. This was followed by an explanation of the process of setting up SPSS for data processing, as well as an explanation of the use of concept matrices for the semantic analysis of open ended responses.

In Chapter 6, the researcher presents and concludes his results in the form of tables and graphs.

## Chapter 7

### RESULTS

#### INTRODUCTION

Throughout the course of this research the researcher has analysed various aspects of conflict between the KZN DoE and Teacher Unions who represent aggrieved educators, and sought to find reasons for why the education department is wracked with conflict at all levels and its effects on education transformation. The time has now arrived when an effort will be made to consolidate the reasons for the conflict. Many points considered in this chapter will have been considered elsewhere but in this chapter we will be using tables and graphs and brief explanations to report results.

#### CONTEXTUAL FACTORS AND ISSUES WITHIN EDUCATION

There are forces at work within the context of education which must bear a large responsibility for conflict in education.

#### The Impact of Rationalisation

Education cuts have been a major factor for the escalating disputes within education. This is apparent across the education system. There is an increase in recent years in the employment of educators as unprotected temporary educators, locum tenens on month to month contracts or short term contracts. As a matter for funding it provides the DoE with short term flexibility in the management and employment of educators. It is therefore not surprising that disputes are rampant as teacher unions see this as an exploitation of worker rights but the DoE sees it as saving as benefits such as housing, medical aid, leave rights etc are being waved saving the DoE costs so that the money that would be spent on permanent employees can now be

redirected. Teacher Unions see this as unfair labour practices and declare disputes on these conditions of service. The issue of temporary educators, not being paid on time, or remaining unpaid for long periods, also leave room for further disputes. Temporary educators employed on a monthly basis, affects teacher morale and sustainable quality service delivery creating disputes from parents and learners.

The main reasons for cuts could be seen in the following sections:

### ***Budgetary constrains***

Provincial DoE's have been forced to cut back because of the Medium Term Expenditure Framework (MTEF) mostly because staffing is the largest of the budget, poor planning and mismanagement of funds.

### ***Education resources***

Funding that comes from the Norms and Standards for Funding goes to resources that have been earmarked for the poorest of poor schools and for stationery, text books, consumables etc. Conflict arises when schools do not receive these resources or receive them very late.

### ***The abolishing of posts***

When the DoE abolishes posts that odd to be filled, it results in large budgetary savings but affects the quality of service delivery due to higher learner teacher ratios. These abolished posts result in violation of the rights of teachers who must do more for less. Teacher unions are in conflict about the abolished posts as it affects the conditions of employment of an educator. Parents and learners also dispute the quality of delivery with large class units.

### ***Unilateral restructuring in Education***

The restructuring of education without consultation leaves large scale uncertainty and anxiety with office based personnel with regards to transfers and absorption of personnel. The rights of these personnel, conditions of service, discrimination, race, sex, fairness, transparency, equity and affirmative action all have given rise to escalated conflict in education.

### ***Politics in Education***

The fact that education is often regrettably used as the proverbial political football has a negative impact on the development, growth and service provided in education. This is clearly illustrated in the large number of disputes in respect of the appointment of staff and promotions and the back log of disputes that geographically and politically exist. There are a number of unresolved arbitration cases and numerous precedent arbitration awards granted to teacher unions.

### ***Reluctance to implement National Legislation***

National legislation governs education in South Africa and facilitates the implementation of various educational programs to effect educational transformation. In KwaZulu-Natal these national programs are creating widespread confusion and are applied inconsistently which are disputed and impedes education further. KZN is very much the domain of the Inkatha Freedom Party even though the African National Congress has recently won the elections in this province. The power shift is only at the highest level. Within the rank and file of the department of education are already appointed IFP members who hold a large number of leadership and decision making posts. The conflict of interest here leads to anarchy within the education system and resistance to change. The only way to begin the transformation results in open confrontation like the CEO of Education and the present Minister of Education who

decided to suspend him. This may be inevitable if the officials who are IFP affiliated are resistant to change and do not meet their contractual agreements and will continue to frustrate the process because of political goals.

### *Fruitless Expenditure*

The fact that KZN is one of the more challenged provinces with more learners and educators to deal with in a context of an underdeveloped infrastructure means that the budget must go a long way more. The fact that the capacity building programs that are being implemented seems not to be achieving the desired results due to poor planning and utilisation of the budget, lack of accountability and mismanagement and the model used for retraining or capacity building is resulting in fruitless expenditure. Evidently the process is to pursue other goals instead of educational goals outlined in the master strategic plan of the province. Even for political rivals and alliances education no longer seems to be the sacred key of liberation and economic empowerment and what the previous apartheid government was once criticized for seems to be happening under window dressed programs that disadvantage also the perpetrators' constituencies where there is still widespread illiteracy, racism, sexism, discriminatory and egocentric education because of the resistance to work together. If education provision efforts achieve the described scenario above, it is fruitless expenditure and a waste of taxpayer's money. This conflict is evidence in the escalated conflict within the province that resulted in industrial action on post provisioning norms, salaries, performance pay and a host of other issues.

### *Degradation of schools*

Schools degrade for many reasons but when they are left to ruins because of mismanagement of funds, poor leadership, unskilled or poorly capacitated personnel, poor communication, lack



of commitment and politics leads to poor service delivery and degradation at another level. The researcher identifies this as means to achieve an end and when adopting a fine grained analysis of the matrices, shows that the root causes to conflict within KZN is poor capacity in the DoE, School Governing Bodies, and Teacher Organisations.

### ***Inter Union Politics***

The teacher unions within the province have clearly declared their alliances to different political parties. The SADTU forms part of the tripartite alliance between COSATU, ANC and themselves and have been in existence since before the introduction of the democratic dispensation in SA in 1994. The NATU and the IFP are allied with a variety of other smaller unions and political parties. The significant alliances are the first two which have a significant impact on the resolutions reached at the ELRC, depending on caucuses that ultimately determine power and control. It became increasingly evident when NATU refused to take part in the survey. One could argue that ignoring communication is in itself an act of hostile communication. This form of communication practice was also practiced by the previously IFP-aligned DoE. This also indicated that there is a strong alliance between NATU and the IFP, which translated into hostility and non-cooperation with SADTU on political grounds.

### **THE DEMOGRAPHIC PROFILE OF THE RESPONDENTS**

Having provided the contextual background factors for the conflict which is being experienced in the KZN DoE, the researcher now reports the results of his survey of the perceptions of departmental officials and union officials regarding the conflict.

#### **The gender of the respondents**

From the table below it can be seen that males predominate among the officials from the KZN DoE and the Teacher Unions who served as respondents.

Gender of respondent	Male	14
	Female	4

These figures, among others, indicate that arbitration predominantly is a male domain of education management, despite the fact that affirmative action legislation has been in place since the mid nineteen nineties of the previous century, and consequently that the appointment of females to leadership posts in both the DoE and the teacher unions is slow and far from being progressive.

### **The designations of the respondents in their organizations**

From the table below the different designations of officials from the department and teacher organisations that are involved in handling conflict in education can be seen. In teacher unions the designation titles are slightly different but the work involved in dispute resolution is the same.

The designation/ post of respondent	Site Steward	1
	General Secretary of teacher organisation	4
	Regional secretary of teachers organisation	2
	Departmental Official CES	1
	Departmental Official DCES	5
	Labour Relations Officer	1
	Deputy Director Labour Relations	1
	Education Labour Relations Council Secretary	1
	Other	2

From the table one can see that teacher union officials predominantly perform the roles of shop steward, general secretary, regional secretary, while labour relations officers are generally employees of a teacher union. The level and status of most union representatives are level one, two, three or four but carry the same status when representing members of the union. They have a “delegated authority” and “indemnity” from the union and have the autonomy to make decisions around the dispute provided that the grievant or disputant is consulted in the course of dealing with conflict.

The department official titles are Deputy Director labour relations (DDLRL), Chief Education Specialist (CES), Deputy Chief Education Specialist (DCES). They represent the DoE as the respondent and or a higher rank than union representatives. Unfortunately the decision-making powers at the arbitrations are based on instructions they receive from superiors and arbitration proceedings are stood down or adjourned to obtain mandates resulting in delays in the arbitration process.

The ELRC General Secretary’s designation has statutory power only in respect of the ELRC constitution and is not involved in conflict resolution but is responsible for conflict management. The DoE officials not included in the list above may represent the department as respondents in conflict resolution but are generally responsible for conflict management.

From the table on the previous page one can see that 2 officials are not directly involved in dispute resolution as these respondents are responsible for conflict management. It can be seen from the table that 8 respondents from the unions and 9 respondents are departmental officials who formed part of the sample and who are directly involved in conflict resolution.

From the table below it can be seen that the 8 respondents in age group 30-40 have been in the system of education for some time and indicates that fewer of the newly appointed educators are appointed within the bureaucracy of the department as well as in the teacher union.

Age of Respondent	30 to 40	8
	41 to 51	8
	52 to 62	2

The table also reveals that the posts that deal with conflict and disputes should possibly have more experience in the field. In the age category 41-50 are departmental officials and union officials that have been part of the old and new dispensation and are more likely to understand the bureaucracy and transition better. In the age category 52 to 62 it is apparent that these labour posts and positions did not exist in the past dispensation. In the old dispensation the structure shows that there was no report on conflict and also indicates that our democracy is still very much in an infant stage. A further analysis could indicate that personnel are hand picked for the task to achieve objectives.

**Ethnic groups to which interviewees belong**

From the table it can be seen that African leaders are in a slight minority and implies that we have not reached our affirmative action principles. However the data on this table could have in fact shown that we have met targets if NATU officials have been included in the sample.

Ethnic Group of Respondent	African	7
	Indian	6
	White	4
	Coloured	1

The larger Indian/white statistics can be seen as large but necessary for specialized functions and capacity which may not be acquired in the affirmative appointments. In the researchers' analysis more can be done in the appointment of Africans in the position of the unions and the DoE because the table indicates we have not yet transformed.

### Regional distribution of interviewees

Region in KwaZulu-Natal to which Respondent Belongs	Umgungundlovu	9
	Ethekwini	4
	KwaZulu Natal province	5

The table shows the distribution of respondents within regions. The researcher points out that research parameters were set on the old regions Durban South, Pietermaritzburg and Port Shepstone Regions. These regions have emerged as new regions in the restructuring where the 3 regions will become two as illustrated in the table.

### Organisations of interviewees

It can be seen from the table that even though only a sample of the province is utilised in the research that conflict levels are high and it is assumed that it will be higher if the whole province is utilised as a sample.

Organisation of representation		
South African Democratic Teachers Union		6
Association of Professional Educators KwaZulu-Natal		2
Suid Afrikanse Onderwysers Unie		1
Department of Education KwaZulu-Natal		8
Education Labour Relations Council Secretary		1

It can be seen from the table that all teacher organisation and the departmental officials form part of the sample with the exception of NATU. The table shows that the sample of respondents that feature decreases in number according to the size of the organisations.

#### Number of years in service

The years of service in the DoE are important and provide valuable data on capacity amongst the officials in the pre-democratic period, post democratic and current education system.

Numbers years in this position		
0-2 Years		3
3-5 Years		6
6-8 Years		6
9-11 Years		2
Above 20 years		1

It can be seen from the table that respondents in the position during the last 10 years have been appointed in the positions. The positions seem to be saturated and now fewer persons are being appointed in the posts. The above 20 years in the post shows that prior to the election there were few people employed in those posts as these posts firstly did not exist. It can also be seen that the structure was more an autocratic structure.

## INTERVIEWEES' PERCEPTIONS OF THE ROOT CAUSES OF CONFLICT IN THE KZN DOE

The concept matrix below summarises the perceptions of the eighteen interviewees about the root causes of conflict in the KZN DoE:

	Mismanagement of funding	Hardness in responding to grievances	Racism & Cultural Differences	Lack of transparency	Attitude and lack of tolerance	Mistrust	Nepotism	Bad faith consultations	Non compliance to procedures and practices	Misunderstanding	Laziness & Ignorance	Unilateral decision making	Non Implementation of legislation	Inefficiency	No clear direction	Promotions	Opposition to TD's	Poor communication	Politics	Poor capacity in DoE, SGH's & Teacher organisations	Respondent
1	✓			✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	1
2								✓		✓		✓	✓	✓			✓	✓		✓	2
3					✓	✓				✓		✓			✓					✓	3
4								✓				✓	✓		✓		✓		✓	✓	4
5							✓					✓	✓						✓	✓	5
6								✓							✓	✓			✓		6
7								✓	✓							✓					7
8												✓	✓	✓					✓		8
9																✓			✓		9
10											✓				✓				✓		10
11										✓	✓									✓	11
12																		✓			12
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15											✓					✓					15
16											✓										16
17											✓							✓			17
18								✓													18
	12	7	7	6	6	6	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5

Out of 18 respondents 12 respondents affirmed that the root cause for conflict in education in KZN is due to poor capacity. If poor capacity is the root cause with politics and poor communication the DoE's objective to have efficient education are miles away from the "Bulls Eye". The conflict in education can be seen from the large numbers of disputes for the appointment of educators and promotions within KZN. In fact promotion disputes registered

in the ELRC shows the highest are from KZN in regards to all other provinces. This is also evident in the large numbers of unresolved disputes and fine grained analyses for delays in arbitration processes. Among others 8 of 18 respondents indicate the respondent which is the DoE is unprepared for the arbitration which is the last point of the conflict. As indicated it is the win/ lose stage where parties to the conflict fail to compromise and want to have all or nothing.

For 8 of the 18 respondents there was a difficulty in securing witnesses which delayed the process. It is assumed that witnesses are afraid, or could be occupied at school or office, or is intimidated or the failure to secure witnesses is to delay as long as possible or to frustrate the process to secure a winner takes all position at the cost of education.

The results reported below are derived from open ended-questions asked to interviewees during personal interviews. Their responses are reported by means of 10 concept matrices from which can be determined their perspectives on the roots of conflict in the KZN DoE.

Question 11	Frequency of reasons used by organizations	Total	Dept. of Education	SADTU	APEK	NATU	SAOU	ELRC
Root Causes For Conflict	Poor Capacity of TO's, DOE, & SGB's	14	5	6	2	0	1	0
	Politics	8	3	3	1	0	0	1
	Poor Communication	6	2	1	2	0	0	1
	Opposition to Teacher Organizations	8	2	4	1	0	1	0
	Promotions	10	3	3	1	0	0	1
	No Clear Direction	4	1	2	1	0	0	0
	Inefficiency	6	1	3	2	0	0	0
	Non Implementation of legislation	4	1	2	1	0	0	0
	Unilateral Decision making	2	0	2	0	0	0	0
	Laziness & Ignorance	4	3	0	1	0	0	0
Misunderstanding	5	1	2	2	0	0	0	



From the table it can be seen that that the root causes in education from respondents from different organisations have similar perceptions. 14 respondents out of 18 indicate that the root cause of disputes is poor capacity among DoE, Teacher Unions and School Governing Bodies. As it can be seen perceptions of respondents *concur except NATU who refused to be part of the sample*. Other significant common perceptions on root causes are promotions, politics, and opposition to teacher unions, poor communication and inefficiency.

## CONCLUSION

In this chapter the researcher presented the results of the research by means of narratives, tables and matrices which the researcher then interpreted. The initial sets of tables were used to establish demographic profiles of the respondents. They provide *information* about the respondents the ethnic, gender, age, region, organisations and designations of the respondents. Subsequent to that I used narratives to provide a *more detailed* characterisation of the context of the conflict. Matrices revealed the root causes of conflict as revealed by respondents who are *officials working with conflict in education*.

I showed that the before-mentioned narratives, tables and matrices strongly support the validation of the main problem of this study, namely that conflict needs to be transformed in education to effect education transformation. Conflict is endemic at all levels of education between the DoE and Teacher Unions and aggrieved educators.

In the next chapter I will briefly summarise the findings of this study and make brief recommendations about how to *transform conflict in education*.

SUMMARY, LIMITATIONS AND RECOMMENDATIONS

**INTRODUCTION**

In this study the researcher documented the incidence of conflict between aggrieved educators and their employer, the KZN DoE, the causes of conflict, and current approaches to conflict transformation. In this chapter the researcher will present a concise summary of the outcome of the research.

**FINDINGS**

The results reported here were obtained by means of observational studies of teacher union meetings, ELRC meetings and arbitrations in practice, and interview schedules and were quantified by means of the statistical program SPSS Base 11.5 and concept matrices.

The contents of the semi-structured interview schedule were designed with open-ended questions that contained personal particulars of the interviewees, questions that encouraged candid and transparent answers.

Although researchers usually choose between qualitative and quantitative modes of research, an analysis of arbitration proceedings requires a combination of both modes. Therefore, the researcher decided to limit the analysis to a smallish sample of open-ended responses.

The literature survey for this study revealed that if negotiations were reconceptualised by providing conflicttees with new mental images that portray all conflicted parties as potential co-winners, one has a powerful framework for conflict transformation, because it provides a

transformation, because it provides a conceptual mechanism for transforming the disequilibrium of conflict to the equilibrium of peace. In Klopper's (2002) terms, conflict transformation is possible if conflictors adopt a new belief system in which there are no agents and patients, no winners and losers, but co-agents, equal winners, who share a common peaceful future.

Finally, the contribution of Lederach (1989) should be mentioned, because it advocates the pursuit of "conflict transformation," as opposed to "conflict resolution" or "conflict management." Lederach asserts that *conflict transformation* is different from "conflict resolution" or "conflict management" because it reflects a better understanding of the nature of conflict itself.

Lederach (1989) states that conflict transformation is dialectic in nature and should be recognized as such rather than simply try to eliminate or control conflict. By this he means that social conflict is naturally created by humans who are involved in relationships, yet once it occurs, it changes (i.e., transforms) the events, people, and relationships that created the initial conflict. Conflicts change relationships in predictable ways, altering communication patterns and patterns of social organization, altering images of the self and of the other.

Conflict transformation is also a prescriptive concept. It suggests that if left alone, conflict can have destructive consequences. But the destructive consequences can be modified or transformed so that self-images, relationships, and social structures improve as a result of conflict instead of being harmed by it.

Transformation includes transforming the way conflict is expressed. It may be expressed competitively, aggressively, or violently, or it may be expressed through non-violent advocacy, conciliation, or attempted cooperation.

## **RECOMMENDATIONS**

A review of current Education legislation, the media, arbitration awards, minutes of meetings and academic literature regarding conflict in education in KZN indicates conflict does exist at all levels of the DoE, and is a part of life at large. Taking this as point of departure, one can assume until disputed and proven wrong by empirical research, that conflict is endemic in KZN DoE and that conflict is part of life at large. If this is the case, strategies must be incorporated in the Labour Relations Directorate to deliberately build capacity among all parties, to put measures into place to include a Transformative Approach Advocacy Campaign, which must accompany amendments in legislation to combine Conciliation and Arbitration Procedures and beef up the Grievance Procedure to be Transformative by reconceptualizing the conflict with restated negotiation objectives. Facilitate a provincial ELRC to address provincial Disputes to expedite the process and to keep to time frames. Where confrontations are deliberate and instigated or conflict is escalated for frivolous reasons severe fines should be imposed.

Finally, this study has focused on conflict transformation. Of equal importance are studies, yet to be done, on other ways of dealing with conflict through electronic grievance handling (e-Grievance handling) and electronic arbitration (e-Arbitration) to effect the expeditious resolution of grievances, to ensure that all parties involved remain occupied productively and thereby to ensure cost saving for the DoE.

ADDENDA

Addendum A: Letters of facilitation



*Department of Communication Science*  
UNIVERSITY OF ZULULAND (DURBAN-UMLAZI CAMPUS)  
Private Bag X 10 Isipingo, 4110  
Tel: (031) 9077002, Fax (031) 9073011

Thursday, 20 February 2003

The Labour Relations Officer  
KZN Department of Education & Culture  
Port Shepstone Region

Dear Mr Jenkins.

ACCESS AS OBJECTIVE OBSERVER TO ARBITRATION PROCEDURES: MR. D. GOVENDER

Thank you for the information that you provided to me during our telephonic conversation this morning.

Mr Govender is doing an objective observation study of the communication practices involved in arbitration between the KZN Department of Education & Culture and its employees, represented by various teacher organisations. The study uses current theories of conflict transformation as integrating framework. It is aimed at developing a conflict transformation framework for disputes between the KZN Department of Education & Culture and its employees.

As Mr Govender's promoter I would like to give you the assurance that the study will be of a constructive nature. I have enquired with Mr. Govender about the nature of his leave. He has indicated that it is Vacation leave that he has taken especially for study purposes.

I was not aware that Mr. Govender has a dispute pending against the Department in your region. That clearly needs to be resolved before he credibly can act as an observer during arbitration procedures in your region. This clearly does not preclude Mr Govender from observing arbitration procedures in other regions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.M. Klopper', written over a horizontal line.

Prof. R.M Klopper

Programme coordinator: Graduate Studies in Cognition & Communication



# University Of Zululand

*Department Of Communication Science (Durban Campus)*

Unit For Postgraduate Studies in Cognition, Language Learning & Communication

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Fax (031) 2607251-3011

E-Mail [rkopper@is.udw.ac.za](mailto:rkopper@is.udw.ac.za) or [rklopper@iafrica.com](mailto:rklopper@iafrica.com)

Thursday, April 01, 2004

Attention: The Secretary  
NATU  
KZN Province

Dear Sir

URGENT REQUEST THAT A SECRETARY, SHOPSTEWARD OR NEGOTIATER OF NATU GIVE AN OFFICIAL INTERVIEW TO RESEARCHER REGARDING DISPUTES IN EDUCATIONAL SETTINGS IN KWAZULU-NATAL

One of my Masters students, Mr. D. Govender, reports that he is experiencing problems in getting officials from NATU to give him an interview regarding the above-mentioned matter. You are the only union that has not constructively engaged in this research project. It would be a pity if Mr. Govender had to report in his master's thesis that he could not ascertain the compliance of NATU to represent their perspectives on dispute resolution in KZN education. My instruction to Mr. Govender is to proceed with the processing of his research data and report your non-compliance if you have not engaged with him within the next two weeks from today.

Kind regards

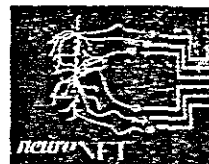
Prof. R M Klopper

HOD: Communication Science (Durban)





**University Of Zululand**  
*Department Of Communication Science*  
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Tel 082-9133-150  
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E-mail [rklopper@iafrica.com](mailto:rklopper@iafrica.com)

Tuesday, 07 January 2003

The CEO

KZN Department of Education & Culture

ULUNDI

Dear Prof. Dlamini

**OBSERVATION STATUS URGENTLY REQUESTED FOR MASTERS STUDENT, MR, D. GOVENDER**

One of my Masters students, Mr. D. Govender, is doing research in conflict transformation in education, focusing on dispute resolution between the KZN Department of Education and the Teacher Unions. Mr. Govender needs to observe the Department's provincial, and regional education meetings in the course of 2003 to document the communication practices employed during these meetings. He also needs to observe the Department's conciliation & arbitration procedures. The study will be of a constructive nature.

Mr Govender is the Principal at Woodlands Secondary School in Pietermaritzburg.

Your assistance in this matter will be greatly appreciated.

Sincerely,

---

Prof. Rembrandt Klopper

30 Aloe Street  
Craigieburn  
Umkomaas  
4170

15 January 2003

APEK  
The President/ General Secretary  
Mr. Mickey Pierce  
P O Box 613  
Northway  
4065

**Research for Master's Studies in Conflict Transformation:**

Dear Sir

I am currently a Principal at Woodlands Secondary School and I am doing research in Communication Science on conflict transformation focusing on dispute resolution between KZN Department of Education and Culture and Teachers Unions.

In order for me to do my research I need to observe APEK's Provincial, Regional & Branch meetings in sample and conduct interviews with key leaders of the union to document communication practices employed during these meetings.

I would also need to observe a sample of *Conciliation and Arbitration proceedings* the union will be involved in.

The study will be constructive in nature.

Your assistance in this matter will be greatly appreciated.

Sincerely



---

D. Govender

Tel. 039 979 6775

Cell. 083 777 9770

Email. [govenderbob@telkomsa.net](mailto:govenderbob@telkomsa.net)  
[christelg@telkomsa.net](mailto:christelg@telkomsa.net)

30 Aloe Street  
Craigieburn  
Umkomaas  
4170

05 January 2003

South African Democratic Teachers Union  
The General Secretary  
Mr. Ndaba Gwabaza

Research for Master's Studies in Conflict Transformation:

Dear Sir

Pursuant to my telephonic conversation on the 5<sup>th</sup> January 2003 concerning my research studies my letter has reference:

I am currently a Principal at Woodlands Secondary School and I am doing research in Communication Science on conflict transformation focusing on dispute resolution between KZN Department of Education and Culture and Teachers Unions.

In order for me to do my research I need to observe SADTU's Provincial, Regional & Branch meetings in sample and conduct interviews with key leaders of the union to document communication practices employed during these meetings.

I would also need to observe a sample of Conciliation and Arbitration proceedings the union will be involved in.

The study will be constructive in nature.

Your assistance in this matter will be greatly appreciated.

Sincerely

---

D. Govender

Tel. 039 979 6775

Cell. 083 777 9770

Email. [govenderbob@telkomsa.net](mailto:govenderbob@telkomsa.net)

[christelg@telkomsa.net](mailto:christelg@telkomsa.net)

30 Aloe Street  
Craigieburn  
Umkomaas  
4170

SADTU-KZN  
The Provincial Secretary  
Indaba Gwabaza

Request to Observe Chamber Meetings:

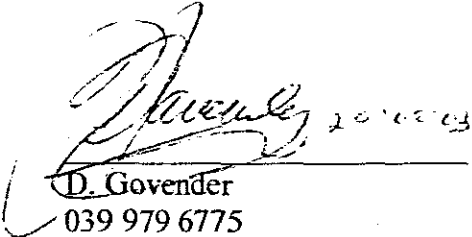
Dear Indaba

Further to my discussion today, my request to the ELRC, to observe the chamber meetings have been declined. However the ELRC is willing to permit me entry provided that one of the parties to the chamber allows me access. (refer to attached letter from ELRC par. 3)

I hereby request permission from SADTU to allow me as observer to the chamber for research purposes.

Thank you in anticipation of your reply.

Sincerely



D. Govender  
039 979 6775  
083 777 9770



Education Labour Relations Council  
KwaZulu Natal Chamber

elrc

P.O. Box 40045  
Red Hill, 4071

Tel (031) 5731777  
Fax (031) 5731779

Date: 17 February 2003

Mr. D. Govender  
30 Aloe St.  
Craigieburn  
Umkomaas  
4170

Sir,

**Response to your request to observe Chamber Meetings**

Further to our telephonic conversation I hereby confirm that your request was put to the chamber meeting of 07 February 2003 and your request was denied.

In terms of s10(8)(e) of the constitution of Council, **'Every meeting of the Council shall be conducted in private unless the Council decides otherwise.'**

It was however felt that you could gain entry as an observer via any of the parties to chamber.

I apologise for inconvenience caused by the delay in responding to your request.

Yours faithfully,

Leon Pillay (provincial secretary)



**The South African Democratic Teachers Union  
Kwa Zulu Natal Province**

**3<sup>rd</sup> Floor United Building  
58 Field Street  
Durban, 4001**

**Telephone : 031 - 3051828  
Fax : 031 - 3051847  
P.O Box 4329, Durban, 4001**

20 February 2003

**To whom it may concern**

Dear Sir / Madam

**Re : Permission to attend bilateral meetings SADTU – Department  
to assist research studies.**

Mr D Govender ( persal 1099 04 88 ) has approached the union for permission to attend, as an observer, meetings between the union and the Education Department regarding labour related matters.

Mr Govender is currently pursuing his Masters degree and his dissertation relates to **communication and signs with specific reference to conflict transformation (with reference to the Department of Education and the teacher organisations)**

P2/...

The union supports his request given that the findings from his field of study will greatly benefit both parties to the employment relationship.

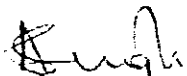
He has undertaken to make available the findings / suggestions of his research to all parties concerned.

Mr Govender has been an educator for more than sixteen years and has also been actively involved in the union.

I trust that the above information will be of assistance to you.

Please do not hesitate to contact the writer should you have any queries in this regard.

Yours sincerely

---

~~to~~ **Mr N.E Gcwabaza**  
**Provincial Secretary**

bt

30 Aloe Street  
Craigieburn  
Umkomaas  
4170

05 January 2003

NATU  
The President/ General Secretary  
Mr. Pungusa / *Mr. Pungusa*

**Research for Master's Studies in Conflict Transformation:**

Dear Sir

I am currently a Principal at Woodlands Secondary School and I am doing research in Communication Science on conflict transformation focusing on dispute resolution between KZN Department of Education and Culture and Teachers Unions.

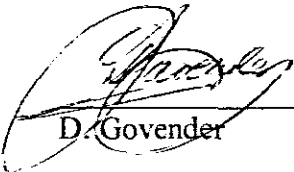
In order for me to do my research I need to observe NATU's Provincial, Regional & Branch meetings in sample and conduct interviews with key leaders of the union to document communication practices employed during these meetings.

I would also need to observe a sample of Conciliation and Arbitration proceedings the union will be involved in.

The study will be constructive in nature.

Your assistance in this matter will be greatly appreciated.

Sincerely



---

D. Govender

Tel. 039 979 6775

Cell. 083 777 9770

Email. [govenderbob@telkomsa.net](mailto:govenderbob@telkomsa.net)

[christelg@telkomsa.net](mailto:christelg@telkomsa.net)





**Education Labour Relations Council  
KwaZulu Natal Chamber**

**elrc**

P.O. Box 40045  
Red Hill, 4071

Tel (031) 5731777  
Fax (031) 5731779

Date: 17 February 2003

Mr. D. Govender  
30 Aloe St.  
Craigieburn  
Umkomaas  
4170

Sir,

**Response to your request to observe Chamber Meetings**

Further to our telephonic conversation I hereby confirm that your request was put to the chamber meeting of 07 February 2003 and your request was denied.

In terms of s10(8)(e) of the constitution of Council, 'Every meeting of the Council shall be conducted in private unless the Council decides otherwise.'

It was however felt that you could gain entry as an observer via any of the parties to chamber.

I apologise for inconvenience caused by the delay in responding to your request.

Yours faithfully,

Leon Pillay (provincial secretary)



University Of Zululand  
*Department Of Communication Science*  
Postgraduate Studies in Cognition & Communication

Tel 0844466662  
Fax (031) 2607251  
E-Mail [postgrad@uzulimail.com](mailto:postgrad@uzulimail.com)

PO Box 1, Gillitts 3603

Tuesday, January 18, 2005

The Circuit Manager  
KZN Department of Education  
Umgungundlovu Region  
Pietermaritzburg  
4201

Dear Mr. Naidu

STUDY LEAVE FOR MR. D. GOVENDER (PERSAL NUMBER 10990488)

Mr. Govender, one of my masters students is in the final phases of completing his dissertation. He is making excellent progress, but needs two weeks study leave in order to give his studies his undivided attention in order to submit the assessment copies of his dissertation by the deadline, the middle of February of this year.

Sincerely,

---

Prof. R M Klopper



## Department of Communication Science

UNIVERSITY OF ZULULAND (DURBAN-UMLAZI CAMPUS)

Private Bag X 10 Isipingo, 4110

Tel: (031) 9077002, Fax (031) 9073011

Thursday, 20 February 2003

### TO WHOM IT MAY CONCERN

This letter serves to certify that Mr. D. Govender is a masters student in Communication Science, working on Conflict Transformation under my guidance. He is focusing his research on conciliation and arbitration proceedings between the KZN Department of Education & Culture and its employees, represented by various teacher organisations.

Mr Govender needs to objectively observe conciliation and arbitration proceedings in your region. I hereby request that you agree to him being present as an observer, and if at all possible, that you make yourself available for an interview with him after the proceedings.

Sincerely,

Prof. RM Klopper

Programme coordinator: Graduate Studies in Cognition & Communication

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As a participant in these proceedings I hereby agree that Mr. D. Govender may be present as an observer at these conciliation & arbitration proceedings. He will keep the factual details of the proceedings in the strictest of confidence and will not identify any particular individual in his thesis.

Title, initials & surname: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

30 Aloe Street  
Craigieburn  
Umkomaas  
4170

05 January 2003

The ELRC  
General Secretary  
Mr. Leon Pillay

**Research for Master's Studies in Conflict Transformation:**

Dear Sir

I am currently a Principal at Woodlands Secondary School and I am doing research in Communication Science on conflict transformation focusing on dispute resolution between KZN Department of Education and Culture and Teachers Unions.

In order for me to do my research I need to observe ELRC meetings in sample to document communication practices employed during these meetings.

I would also need to observe a sample of Conciliation and Arbitration proceedings registered with the ELRC

The study will be constructive in nature.

Your assistance in this matter will be greatly appreciated.

Sincerely



---

D. Govender

Tel. 039 979 6775

Cell. 083 777 9770

Email. [govenderbob@telkomsa.net](mailto:govenderbob@telkomsa.net)

[christelg@telkomsa.net](mailto:christelg@telkomsa.net)

Addendum B: interview schedule

**(APPENDIX A)**

**INTERVIEW SCHEDULE**

Researcher: Mr. D Govender (Masters' student)  
Study leader: Prof. R.M. Klopper  
Department of Communication Science  
The University of Zululand (Durban Campus)

**Note from study leader to persons being interviewed**

Mr. Govender's research project is being undertaken to gain a better understanding of disputes in educational settings in KwaZulu-Natal, and to determine how arbitration procedures could be improved to the mutual benefit of disputees. Your honest and candid responses will assist us in his enterprise.

This interview is in the form of a focussed conversation between yourself and Mr. Govender, so please relax and state exactly what is on your mind.

If you do not understand any of Mr. Govender's questions, please ask him to clarify them. He may in some instances also ask you for additional information if any of your responses need elaboration or clarification.

Finally, for ethical reasons we need to record your personal details to show that an actual person provided the answers. I would like to give you the assurance that your personal identity will under no circumstances be revealed to any person or organisation or in print when the results of the study are made public.



09 July 2003

\_\_\_\_\_  
Prof. R.M. Klopper

\_\_\_\_\_  
Date

**Survey**

**Your Personal Details**

1. Your title (Dr/Mr/Mrs/Ms/Miss) \_\_\_\_\_
2. Your first names or initials: \_\_\_\_\_
3. Your surname: \_\_\_\_\_
4. Your designation/post: \_\_\_\_\_
5. The organisation that you work for: \_\_\_\_\_
6. How long have you been in your post? \_\_\_\_\_
7. What is your age? \_\_\_\_\_
8. What is your gender? \_\_\_\_\_
9. To what ethnic group do you belong? \_\_\_\_\_
10. Which region do you belong to? \_\_\_\_\_

**Conflict in the public education sector**

11. What, in your opinion, are the root causes of conflict between employees and employer in the public education sector?

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12. How successful do you consider arbitration procedures of the Education Labour Relations Council's to be?

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13. How understandable are the Education Labour Relations Council's documents?

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14. Do you feel the arbitration proceedings of the Labour Relations Council could be simplified?

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15. Do you feel there are alternatives to the arbitration proceedings of the Labour Relations Council that could be used?

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16. What, in your view, are the major causes for delays in arbitration proceedings?

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17. What role does the teacher organisations presently play in arbitration proceedings?

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18. What role does the employer presently play in arbitration proceedings?

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19. Do you have any recommendations for improving arbitration procedures?

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Thank you for assisting with this research project.

Addendum C: Education Labour Relations Council (ELRC) Constitution

**SECTION 6:  
EDUCATION LABOUR RELATIONS  
COUNCIL (ELRC)**

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# CONSTITUTION

## THE CONSTITUTION OF THE EDUCATION LABOUR RELATIONS COUNCIL

### ARRANGEMENT OF CLAUSES

#### CHAPTER 1

1. Name of Council
2. Juristic person
3. Constitutional scope
4. Objectives of the Council
5. Powers of the Council
6. Parties to the Council

#### CHAPTER 2

7. Appointment of representatives
8. Appointment of office bearers and staff
9. The manner in which office-bearers and staff may be removed from office
10. Meetings of the Council
11. Committees of the Council

#### CHAPTER 3

12. Provincial chambers

#### CHAPTER 4

13. Application
14. Disputes of interest
15. Disputes of right
16. Conciliation and arbitration procedures

#### CHAPTER 5

17. Strikes, lock-outs, picketing and protest action

#### CHAPTER 6

18. Financial matters of the Council

#### CHAPTER 7

19. Amendment of the constitution
20. Interpretation

#### CHAPTER 8

21. Seat of the Council
22. Winding-up

#### CHAPTER 9

23. Definitions
- Schedule 1 Code of conduct for conciliators and arbitrators

#### CHAPTER 1

##### 1. Name of Council

The name of the Council is the "Education Labour Relations Council", hereinafter referred to as the "Council".

##### 2. Juristic person

- (1) The Council is a juristic person.
- (2) Unless otherwise provided by this constitution, no employer or trade union shall, by reason only of the fact that it is a party to the Council, be liable for any of the obligations of the Council.

##### 3. Constitutional scope

The registered scope of the Education Labour Relations Council is the State and those employees in respect of which the Employment of Educators Act, 1998, applies.

**4. Objectives of the Council**

Subject to the provisions of the Act, the objectives of the Council shall be:

- (1) to maintain and promote labour peace in education;
- (2) to prevent and resolve labour disputes in education;
- (3) to perform dispute resolution functions in terms of section 51 of the Act;
- (4) to promote collective bargaining in relation to all matters of mutual interest;
- (5) to conclude and enforce collective agreements;
- (6) to grant exemptions to parties and non-parties from collective agreements, where appropriate;
- (7) to conduct research, analyse and survey education nationally and internationally, and to promote training and build capacity in education;
- (8) to develop proposals for submission to the Public Service Co-ordinating Bargaining Council (PSCBC) and NEDLAC, or any other appropriate forum, on labour policy and labour legislation that may affect education;
- (9) to confer on workplace forums such additional matters for consultation;
- (10) to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out; and
- (11) to consider and deal with any other matters that may affect the interests of the parties.

**5. Powers of the Council**

The Council shall have the following powers:

- (1) to conclude contracts;
- (2) to mortgage, pledge or otherwise encumber any of its movable or immovable property;
- (3) to borrow, lend and invest money;
- (4) to take part in any form of consultation, litigation and dispute resolution proceedings;
- (5) to promote and establish training and education schemes;
- (6) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Council or their members;
- (7) to establish and administer a fund through the raising of levies to be utilised for the administration of the Council, resolving disputes and other Council activities;
- (8) to exercise any other powers that may be necessary or desirable to achieve the objectives of the Council and which shall include the authority to overrule matters which had been dealt with in a Chamber and which are in conflict with the provisions of this constitution or any national agreement;
- (9) to delegate such matters as the Council may deem necessary to any Chamber, committee or sub-committee of the Council for conclusion and subject to any conditions which the Council may attach thereto;
- (10) to refer such matters as the Council may deem necessary to any Chamber; and
- (11) to appoint a panel of conciliators and arbitrators or an accredited agency/agencies in terms of the provisions of the Act.

**6. Parties to the Council**

- (1) The parties to the Council shall be the employer and trade unions registered in terms of the provisions of the Act, and have members who fall within the registered scope of the Council and admitted to the Council in terms of the provisions of this constitution.
- (2) Any trade union registered in terms of the provisions of the Act, may apply in writing to the Council to be admitted as a party.
- (3) Any employer organisation registered in terms of the provisions of the Act, may apply in writing to the Council to be admitted as a party.
- (4) The application of a trade union to the Council must be accompanied by a certified copy of the applicant's registered constitution and its certificate of registration and must include –
  - (a) details of the applicant's membership within the registered scope of the Council, indicating that it represents at least 20 000 members, and
  - (b) any reasons or information on which the applicant relies in support of its application for admission as a party to the Council.
- (5) For the purposes of the admission criteria set out in clause 6(4) two or more trade unions registered in terms of the provisions of the Act may act together to meet the admission criteria of Council: Provided that where two or more trade unions act together to meet these admission criteria, such trade unions shall be represented in Council as a single party and shall at all times act as a single party.

- (6) Applications for admission to the Council shall be dealt with in terms of the provisions of this constitution and the vote weight shall be determined in terms of the provisions of clause 10(7).
- (7) The Council must, within 90 (ninety) days of receiving an application for admission referred to in clauses 6(2), (3), (4) and (6), decide whether to grant or refuse an applicant admission, and must advise the applicant of its decision. Should the Council decide to grant the applicant admission, such applicant will be admitted to the Council and the vote weights of the parties will be adjusted accordingly.
- (8) A trade union's membership of the Council may be terminated –
  - (a) on receipt of a notice of termination of the membership of the trade union;
  - (b) if a trade union is dissolved or wound up in terms of its constitution; or
  - (c) if a trade union no longer complies with the admission requirements prescribed in this constitution.
- (9) If the membership of a trade union is terminated, the trade union may refer a dispute about its termination of membership of the Council in terms of the dispute resolution procedures of the Council.

## CHAPTER 2

### 7. Appointment of representatives

- (1) The employer shall be represented in the Council by such persons as the employer may from time to time appoint, subject to a maximum of one (1) representative for each representative of a trade union in the Council.
- (2) The trade unions admitted to the Council shall have 25 representatives allocated on the basis of proportionality according to the vote weights; provided that an admitted trade union shall have at least 1 representative.
- (3) Parties to the Council shall make the names of their representative/s available to the General Secretary within 30 days of the Annual General Meeting. Trade union representatives shall be members registered in terms of their constitutions, or full-time officials. Employer representatives shall be full-time officials employed in terms of the Public Service Act, 1994, as amended, or the Employment of Educators Act, 1998.
- (4) A party may at any time withdraw any of its representatives in the Council by giving written notice to the General Secretary.
- (5) Should a vacancy arise in the Council as a result of the withdrawal, resignation or death of a representative, the vacancy shall be filled by the party who previously appointed the relevant representative, by giving written notice to the General Secretary.
- (6) Should a party's membership of the Council be terminated, its representatives shall vacate their seats.
- (7) Parties to the Council may co-opt persons to give expert advice, assistance or evidence to the Council on matters being discussed in the Council: Provided that-
  - (a) where reasonably possible, the General Secretary be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
  - (b) trade unions or the employer shall not be allowed to co-opt more than one person at a time to address, advise or assist the Council on a specific matter; and
  - (c) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

### 8. Appointment of office bearers and staff

#### (1) Office bearers

The Council shall at its Annual General Meeting, elect a Chairperson and two Vice-Chairpersons. One Vice-Chairperson shall be elected from the trade unions and the other from the employer.

#### *Chairperson and Vice-Chairperson*

- (a) The outgoing Chairperson shall preside over the Annual General Meeting of the Council. The General Secretary shall request nominations for a new Chairperson for the forthcoming term of office, to reach him 30 days prior to the Annual General Meeting.
- (b) A person other than a representative or observer of the parties who has consented in writing to his or her nomination may also be nominated as Chairperson.
- (c) All nominations shall be sent to parties 14 days prior to the Annual General Meeting.
- (d) During the Annual General Meeting the outgoing Chairperson or the General Secretary shall formally introduce the candidates before voting commences in terms of the provisions of clause 10(6). The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should an equal number of votes be cast for two or more candidates, the outgoing Chairperson or the General Secretary shall write the name of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared as the elected Chairperson.

- (e) The Chairperson shall hold office for a term of 12 months unless removed by a decision of the Council. The Chairperson so removed or any past Chairperson may be re-elected.
- (f) The provisions of paragraphs (a) to (e) shall with the necessary effect thereto apply in respect of the election of two Vice-Chairpersons of the Council: Provided that one shall be elected from the employer and the other from the trade unions: Provided further that the Vice-Chairpersons shall be elected from the duly appointed representatives of the parties to the Council, and nothing herein prevents any party from replacing any representative with an alternate.
- (g) The Chairperson shall preside over all meetings of the Council.
- (h) The Chairperson shall –
- (i) subject to paragraphs (j) and (k), preside over and enforce order at all meetings in accordance with normal meeting procedure;
  - (ii) sign and date the minutes of a meeting after confirmation;
  - (iii) endorse financial statements after approval by the Council;
  - (iv) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson; and
  - (v) countersign cheques on the Council's banking account.
- (i) Whenever the Chairperson is not available, one of the Vice-Chairpersons shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- (j) Whenever the Chairperson or the Vice-Chairpersons is not available or unable to perform his or her duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- (k) The Chairperson, or the Vice-Chairpersons, shall not be entitled to vote on any matter: Provided that if any of the Vice-Chairpersons have not been replaced by another representative of that party to the Council, such Vice-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairpersons.
- (l) The term of office of a Chairperson and/or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Council consequent to a resolution to that effect.
- (m) The Council may from time to time determine a honorarium payable to the Chairperson of the Council: Provided that, should it become necessary or desirable to engage the services of the Chairperson on a part-time or full-time basis, the Council shall determine the salary and other conditions of employment of the Chairperson by agreement.
- (2) Office bearers and staff**
- (a) The Council shall appoint a General Secretary.
- (b) The terms and conditions of employment, of the office bearers and staff, shall be determined by the Council.
- (c) The termination of employment of all office bearers and staff, including the General Secretary, shall be subject to one (1) calendar month's notice on either side.
- (d) Subject to the provisions of the Act and this constitution, the General Secretary shall be responsible for the sound administration of Council including:
- (i) all meetings of the Council and its committees and recording of minutes of meetings;
  - (ii) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Council;
  - (iii) correspondence of the Council;
  - (iv) keeping an accurate filing system;
  - (v) general office administration;
  - (vi) banking all monies received on behalf of the Council within 24 hours of receipt thereof or on the next working day, whichever is the earliest;
  - (vii) submitting statements of the financial position of the Council whenever required to do so by the Council;
  - (viii) countersigning cheques on the Council's banking account;
  - (ix) keeping a register of all employers and trade unions registered and/or admitted in terms of the provisions of this constitution, which must be made available for scrutiny upon request;
  - (x) calculating the voting percentages of parties to the Council;
  - (xi) keeping in safe custody at the offices of the Council, for a period of not less than three (3) years or in terms of Council's financial policy:
    - (aa) a copy of the approved minutes of every meeting of the Council and its committees, duly signed by the Chairperson who presided at such meeting;

- (bb) a copy of the approved minutes of every meeting of a Chamber, duly signed by the Chairperson who presided at such meeting;
  - (cc) the statements referred to in clause 15 and all records in relation thereto; and
  - (dd) all past constitutions of the Council;
  - (xii) with the prior approval of the Council appointing such staff as may be necessary, and be responsible for all staff employed by the Council;
  - (xiii) providing the Registrar with such information as required in terms of the provisions of the Act;
  - (xiv) determining the duties and functions of the staff employed by the Council.
  - (xv) compiling the annual report of the Council; and
  - (xvi) receiving and processing of all aspects regarding disputes in terms of approved policy and procedures of Council.
  - (xvii) performing such other duties and functions as the Council may from time to time direct.
- (e) Unless otherwise determined by the Council the General Secretary may delegate any of his/her functions to any of the staff of Council.
- (f) The General Secretary must act impartially and in accordance with this constitution and the decisions of the Council's constitutional structures. The General Secretary is accountable to the Council via the Executive Committee.

#### **9. The manner in which office bearers and staff may be removed from office**

Any office-bearer or member of staff may be dismissed by the Council for incapacity, serious neglect of duty or misconduct, subject to the rules of natural justice and fair labour practice. Vacancies occurring as a result of the dismissal of an office-bearer shall be filled as provided for in clause 8(1), and in the case of a member of staff, as provided for in clause 8(2).

#### **10. Meetings of the Council**

(1) The Council shall meet at least four times per year, at such venue, date and time as may be determined by the General Secretary; Provided that one such meeting shall be the Annual General Meeting.

##### **(2) Annual general meeting**

- (a) The Council shall hold its Annual General Meeting during the month of April of each year.
- (b) Unless otherwise agreed to, the following matters shall be dealt with at the Annual General Meeting, in the following order:
  - (i) presentation of credentials;
  - (ii) the financial statements of the previous financial year, which financial year shall run from 1 January to 31 December;
  - (iii) the report of the auditor in respect of the financial statements referred to in sub-paragraph (ii) above;
  - (iv) the levies to be imposed on educators;
  - (v) the appointment of auditors, should it be necessary;
  - (vi) the annual report of the Council;
  - (vii) the admission or otherwise of parties to the Council;
  - (viii) determination of the vote weight in the Council and the Chambers, which shall come into effect on the date of the Annual General Meeting once so adopted; Provided that the change in the vote weight does not affect the change in representation at the meeting;
  - (ix) the determination of the number of members of the Executive, Finance and Legal Committees subject to the provisions of clause 11(5); and
  - (x) the election of a Chairperson and Vice-Chairpersons.

##### **(3) Special meetings of Council and committees of Council**

Special meetings shall be called by the General Secretary upon a written request by any party to the Council: Provided that the General Secretary shall consult, prior to the calling of such a meeting, with the parties to the Council.

##### **(4) Notice of meeting**

- (a) At least 14 days written notice shall be given to all parties, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted.
- (b) It shall be deemed that due notice had been given to a party, if notice of any meeting was given by –
  - (i) the General Secretary or any official of the Council serving notice on any representative of the party concerned;



- (ii) posting of a registered letter containing the notice to the party, at the registered address; or
- (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice has been transmitted to and received by the addressee.

**(5) Quorum of a meeting**

- (a) A quorum of a meeting of the Council or its committees shall be at least those trade unions representing 50% + 1 and the employer; Provided that -
  - (i) proper notice in terms of clause 10(4) has been given to all of the parties; and
  - (ii) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- (b) If, within a further 30 minutes, after the 30 minutes referred in clause 10(5)(a)(ii), of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned, to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in clause 10(4), shall again be given to all parties.

**(6) Voting**

- (a) The employer shall have a collective vote, which shall be exercised by its representatives.
- (b) Trade union representatives shall vote on the basis as determined in terms of clause 10(7) below.
- (c) The voting shall be by show of hands, unless a party requests a ballot, in which event the voting shall be by way of a secret ballot.
- (d) The General Secretary shall act as electoral officer.

**(7) Vote weight**

- (a) The employer shall have 50% of the vote weight in the Council and its committees and the admitted trade unions the other 50% collectively.
- (b) The admitted trade unions in the Council may, during February of each year, reach consensus on the vote weights in respect of the Council and its Chambers based on the PERSAL monthly remittances for the end of December of the previous year and as referred to in the Act.
- (c) In the event of there being no consensus in the Council on the vote weight, the General Secretary shall calculate the vote weight by no later than 15 March of each year and make recommendations to Council using:
  - (i) the monthly remittances referred to in clause 10(7)(b) as at the end of December of the previous year; and
  - (ii) the recommendations of the official auditors of the Council, taking into consideration the respective trade unions' membership audits for the period 1 January to 31 December of the applicable year.

The vote weight that the General Secretary must calculate is the ratio of the trade union's paid-up membership to the total number of paid-up members of all trade unions which are members of this Council. This ratio must be expressed as a percentage. If two or more trade unions are acting jointly they will be treated as a single entity for purposes of calculating their vote weight; Provided that the vote weight of each individual trade union shall be reflected separately.

- (d) For the purposes of calculating the vote weight, dual and multiple membership shall be included in the total membership figures of each of the trade unions to which they are fully paid-up members in terms of the official membership audit; Provided that dual and multiple membership figures shall not be counted more than once in calculating the vote weight, where the educators are members of trade unions which are acting jointly as a single party.
- (e) If a trade union is in dispute regarding the vote weight determined by the General Secretary, such dispute shall be dealt with in terms of the dispute resolution procedures of Council as set out in chapter 4; Provided that such dispute shall be registered within 7 working days of the said determination. In the event of a dispute being declared, the vote weights of the previous year shall apply until the dispute is resolved.
- (f) Subject to clauses 10(7)(a) to (e) above, the General Secretary must also calculate the vote weights of trade union parties to the respective provincial chambers. The provincial chamber vote weight is calculated as the ratio of the trade union's paid-up membership within that province to the total number of paid-up members of all trade unions, which are members to that provincial chamber.

**(8) Meeting procedure**

- (a) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed by the Chairperson immediately after confirmation thereof.

- (b) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation, be submitted in writing as a prerequisite to any debate or decision in respect thereof.
- (c) The Chairperson shall rule on any procedural matter that is not regulated in this constitution.
- (d) A person who is not a representative may be allowed to address the Council at the request of a party and with the concurrence of the Council.
- (e) Every meeting of the Council shall be conducted in private unless the Council decides otherwise.
- (f) The General Secretary shall keep minutes of the proceedings at Council meetings in such a manner as decided by the Council and the draft in writing shall be forwarded by the General Secretary to all parties within a period of 20 days after a meeting.

**(9) Decisions of the Council**

- (a) Unless otherwise agreed to, all proposals must be submitted in writing and be read by the chairperson as a prerequisite to any debate or decision in respect thereof.
- (b) No proposal shall be considered unless it has been duly seconded.
- (c) Subject to the Act and this constitution, all matters that form the subject of a proposal, shall be decided by a majority vote on the employer side together with a majority vote on the employee side.
- (d) No decision taken at a meeting of the Council shall be invalidated by the absence of any party concerned, if it was properly notified of such meeting, in the manner prescribed in clause 10(4) above.
- (e) A decision of the Council will be regarded as a collective agreement in terms of the Act and is binding on all the parties to the Council.
- (f) All decisions of the Council that have an impact on non-parties to the Council must be reduced to writing and signed by the parties to the Council.
- (g) The Council may, in terms of section 30 (1)(k) of the Act, determine a procedure for exemption from collective agreements.

**11. Committees of the Council**

- (1) The Council may from time to time establish committees and may, subject to such conditions as it may determine, delegate any of its functions to any such committee.
- (2) Any committee established in terms of clause 11(1), shall consist of equal numbers of representatives of trade unions and the employer; Provided that each admitted trade union meeting the threshold set in clause 6 (4) shall have at least one (1) representative.
- (3) Committees established in terms of clause 11(1) must submit regular written reports to the Executive Committee or Council, as the case may be.
- (4) A Committee established in terms of clause 11(1) may co-opt experts to render assistance, provided that where such co-option has financial implications prior approval must be obtained from the Executive Committee of Council.
- (5) The following shall be duly constituted committees of Council:

**(a) The Executive Committee**

The Executive Committee shall be accountable to Council and shall have the following functions:

- (i) to manage the day-to-day business of the Council;
- (ii) to determine standing orders for all committees, including the Executive Committee, sub-committees and *ad hoc* sub-committees of the Council;
- (iii) to decide on the manner in which matters referred to the Council shall be dealt with and, if necessary, to refer matters to another committee or sub-committee for advice or recommendation(s);
- (iv) to appoint sub-committees and *ad hoc* sub-committees of the Executive Committee;
- (v) to consider recommendations, including the ratification of agreements referred to it by Chambers, submitted to it by other committees, sub-committees and *ad hoc* sub-committees;
- (vi) to identify research to be undertaken in terms of clause 4(7);
- (vii) to prepare the agenda and supportive documentation for the Annual General Meeting; and
- (viii) to deal with all matters relating to staffing.

**(b) Finance Committee**

The functions of the Finance Committee are:

- (i) to investigate, control and monitor the financial matters of the Council;
- (ii) to advise and make recommendations on financial matters of the Council;
- (iii) to submit on a monthly basis a report to the Executive Committee on the financial position of the Council; and

- (iv) to submit annually to the Executive Committee, 60 days prior to the Annual General Meeting, a report on the financial matters of the Council for the year ending 31 December.

(c) **Legal Committee**

The functions of the Legal Committee are:

- (i) to attend to such matters referred to it by Council, committees of Council or the General Secretary;
  - (ii) to monitor applications for the condonation of late registration of disputes and advise Council accordingly;
  - (iii) to advise and make recommendations to Council, committees of Council or the General Secretary on any matters which have legal implications for Council;
  - (iv) to receive regular reports from the General Secretary on the status of disputes referred to the Council, including the condonation of the late registration of dispute; and
  - (v) to determine administrative procedures and criteria relating to the above.
- (6) The number of members of the Executive, Finance and Legal Committees will be determined at the Annual General Meeting by majority vote of the Council each year. The composition of the trade union representation to the Executive and Finance Committees must be proportional to their respective vote weights. In respect of all other committees the composition of the trade union representation will be proportional to their respective vote weights unless otherwise agreed to by the trade unions.
- (7) All decisions of the Executive Committee shall be taken by consensus. In the event of consensus not being arrived at, the matter shall be referred to the Council for a decision.

### CHAPTER 3

#### 12. Provincial chambers

- (1) The Council shall in every Province referred to in Section 103 of the Constitution, 1996 (Act 108 of 1996), establish a Provincial Chamber ("Chambers") of the Council, which shall be the bargaining or consultative forums in a specific province.
- (2) Chambers established in terms of clause 12(1) shall not be a juristic person.
- (3) **Scope of chambers**  
Chambers shall function in a specific province and deal with matters referred or delegated to Chamber by the Council, as well as matters which fall exclusively under its jurisdiction.
- (4) **Objectives of chambers**  
The objectives of Chambers shall be:
- (a) to maintain and promote labour peace;
  - (b) to prevent and resolve labour disputes;
  - (c) to perform dispute resolution functions;
  - (d) to promote collective bargaining within the scope of its powers;
  - (e) to conduct research, analyse and survey education, subject to approval by the Council; and
  - (f) to promote training and build capacity.
- (5) **Functions of chambers**  
The functions of Chambers will be:
- (a) to deal with such matters referred or delegated to Chambers by the Council;
  - (b) to conclude agreements on matters pertaining only to that Province; Provided that no collective agreement concluded in a chamber may conflict with a collective agreement concluded in the Council;
  - (c) to deal with matters emanating from the agreed dispute resolution procedure of Council which fall within its competency;
  - (d) to refer matters which fall outside its scope, which matters should be dealt with by the Council or the PSCBC, to the General Secretary; and
  - (e) to refer agreements reached within Chambers to the Council, for ratification in accordance with clause 5 (8).
- (6) **Parties to chambers**  
The parties to Chambers shall be the employer and trade unions in the province, admitted to the Council in terms of the provisions of clause 6.

**(7) Appointment of representatives and observers**

- (a) *The employer, shall be represented in the Chambers by such persons the employer may from time to time appoint, subject to a maximum of one (1) representative for each representative of a trade union in the Chamber. Provided that the employer, shall be entitled to have a number of observers equal to its number of representatives.*
- (b) The composition of the representation of trade unions to any Chamber shall be on the basis of proportionality in terms of the vote weights applicable in the Chamber, subject to –
  - (i) the norm being 10 representatives;
  - (ii) trade unions being entitled to a number of observers equal to the number of representatives;
  - (iii) trade unions being admitted and represented in Council; and
  - (iv) the norm with regard to the number of representatives being increased in order to allow a trade union which fails to qualify on the basis of proportionality for one of the 10 representatives in Chamber, having one representative in the Chamber.
- (c) Parties to the Chambers shall make the names of their representatives, and observers available to the Secretary within 30 days of the Annual General Meeting of the Chambers. Trade union representatives and observers shall be members registered in terms of their constitutions, or full-time officials. Employer representatives and observers shall be full-time officials employed in terms of the Public Service Act, 1994 (as amended) or the Employment of Educators Act, 1998.
- (d) A party may at any time withdraw any of its representatives or observers in the Chambers by giving written notice to the Secretary.
- (e) Should a vacancy arise in the Chambers as a result of the withdrawal, resignation, death or disqualification of a representative or an observer, the vacancy shall be filled by the party who previously appointed the relevant representative or observer and by giving written notice to the Secretary.
- (f) Should a party's membership of a Chamber or Council be terminated, its representatives shall vacate their seats.
- (g) Parties to the Chambers may co-opt persons to give expert advice, assistance or evidence on matters being discussed in the Chambers: Provided that –
  - (i) where reasonably possible, the Secretary be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
  - (ii) a trade union or the employer shall not be allowed to co-opt more than one person at a time to address, advise or assist the Chambers on a specific matter; and
  - (iii) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

**(8) Appointment of office bearers and staff**

**(a) Chairperson and Vice-chairperson**

- (i) At the Annual General Meeting of the Chambers, unless otherwise agreed, the parties shall elect a Chairperson from nominations submitted to the Secretary in writing, 14 working days prior to the meeting. At this meeting the outgoing Chairperson shall act as presiding officer. The employer party shall nominate a Vice-Chairperson.
- (ii) A person, other than a representative or observer of the parties, who has consented in writing to his or her nomination, may also be nominated as Chairperson.
- (iii) The Secretary shall send all nominations to parties, 7 working days prior to the meeting referred to in clause 12(8)(a)(i) above.
- (iv) The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should there be an equal number of votes cast for two or more candidates, the acting Chairperson shall write the names of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared the elected Chairperson.
- (v) The Chairperson or Vice-Chairperson shall hold office for a term of 12 months unless removed by a decision of the Chamber or the Council. The Chairperson or Vice-Chairperson so removed, or any past Chairperson or Vice-Chairperson, may be re-elected or nominated as the case may be.
- (vi) The Chairperson shall preside over all meetings of the Chambers.
- (vii) The Chairperson shall –
  - (aa) enforce order at all meetings at which he or she is present, in accordance with normal meeting procedure;
  - (bb) sign the minutes of a meeting after confirmation; and
  - (cc) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson.

- (viii) Whenever the Chairperson is not available, the Vice-Chairperson shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- (ix) Whenever the Chairperson or the Vice-Chairperson is not available or unable to perform their duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
- (x) The Chairperson or the Vice-Chairperson, shall not be entitled to vote on any matter: Provided that if the Vice-Chairperson has not been replaced by another representative of that party to the Chamber, such Vice-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairperson.
- (xi) The term of office of a Chairperson or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Chambers or the Council consequent to a resolution to that effect.
- (xii) The Council may from time to time determine an honorarium payable to the Chairperson of the Chambers.

**(b) Staff**

- (i) The Council shall, after consultation with the relevant Chambers, appoint a Secretary to the Chambers.
- (ii) The Secretary shall be responsible for:
  - (aa) all meetings of the Chambers and recording of minutes of meetings;
  - (bb) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Chambers and the Council;
  - (cc) correspondence of the Chambers;
  - (dd) keeping an accurate filing system;
  - (ee) general office administration;
  - (ff) submitting statements of the financial position of the Chambers whenever required to do so by the Council or the General Secretary;
  - (gg) the implementation of the vote weights determined in accordance with the provisions of Clause 10(7);
  - (hh) keeping in safe custody at the offices of the Chamber, for a period of not less than three years:
    - (A) a copy of the approved minutes of every meeting of the Chambers, duly signed and dated by the Chairperson who presided at such meeting; and
    - (B) the statements referred to in sub-paragraph (ff) and all records in relation thereto.
  - (ii) compiling the annual report of the Chambers, and such report approved by the Chambers shall be submitted to the by no later than 15 February of each year;
  - (jj) providing the Council and/or General Secretary with such information as required;
  - (kk) referring all agreements reached in the Chambers to the Council; and
  - (ll) performing such other duties and functions as the Council or the General Secretary may from time to time direct.

**(9) The manner in which office bearers and staff may be removed from office**

The provisions of clause 9 shall apply, with the necessary effect thereto.

**(10) Meetings of the Chambers and their Committees**

**(a) Meetings of the Chambers and their Committees**

- (i) The Chambers shall meet at least 4 times per year, one of which shall be the Annual General Meeting, in which event the Secretary shall give at least 14 days written notice, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted; Provided that the Annual General Meeting shall be held within 30 days of the Annual General Meeting of Council.
- (ii) In respect of committees of the Chamber, the provision of paragraph (a) (i) above shall apply.

**(b) Special meetings**

The Secretary, upon a written request shall call special meetings, by any party to the Chamber; Provided that the Secretary shall consult, prior to the calling of such a meeting, with the parties to the Chamber.

**(c) Notice of meeting**

At least 14 days written notice shall be given, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted. It shall be deemed that due notice had been given to a party, if notice of any meeting was given by-

- (i) the Secretary of the Chamber serving notice on any representative of the party concerned;
- (ii) the posting of a registered letter containing the notice to the party, at the registered address; or
- (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice had been transmitted to and received by the addressee.

**(d) Quorum of a meeting**

(i) A quorum of a meeting of the Chamber shall be those trade unions representing 50% + 1 and the employer; Provided that –

(aa) proper notice in terms of paragraph (c) above has been given to all of the parties; and

(bb) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.

(ii) If, within a further 30 minutes after the 30 minutes referred to in sub-paragraph (bb) above of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in paragraph (c) above, shall again be given to all parties to the Chamber.

**(e) Voting**

(i) The employer has a collective vote of 50% which shall be exercised by its representatives and the admitted trade unions the other 50% collectively.

(ii) Trade union representatives shall vote on the basis of their vote weights as determined by Council for such Chambers.

(iii) The voting shall be by show of hands, unless the party requests a ballot, in which event the voting shall be by way of secret ballot.

(iv) The Secretary shall act as electoral officer.

**(f) Vote weight**

The provisions of clause 10(7) shall apply.

**(g) Meeting procedure**

(i) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed and dated by the Chairperson immediately after confirmation thereof.

(ii) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation be submitted in writing as a prerequisite to any debate or decision in respect thereof.

(iii) The Chairperson shall rule on any procedural matters, which are not regulated in this constitution.

(iv) Representatives and observers shall be entitled to attend meetings of the Chambers but observers shall not take part in debates, or vote.

(v) A person who is not a representative may be allowed to address the Chambers at the request of a party and with the concurrence of the Chambers.

(vi) Every meeting of the Chambers shall be conducted in private unless the Chambers otherwise decide.

(vii) The Secretary shall keep minutes of the proceedings at Chamber meetings in such a manner as decided by the Chambers, and shall be forwarded by the Secretary to all parties within a period of 20 days after a meeting.

**(h) Agreements of Chambers**

(i) Agreements of Chambers determined by way of voting shall be on the basis of a vote of the employer on the one side and a majority vote of the trade unions on the other side.

(ii) The provisions of clause 14(2) shall apply with the necessary effect thereto.

**(11) Financial matters of the Chambers**

(a) The annual budget submitted to the Council in terms of clauses 18(1) and (2) shall make provision for Chambers and shall include such expenses as the Council may agree to from time to time.

(b) Accounts in respect of approved expenditure shall be submitted to the General Secretary by the Secretary, for settlement.

- (c) The Executive Committee may approve a petty cash for the Chambers, and shall be administered by the Secretary.
- (d) Funds required for a petty cash account shall –
  - (i) be kept safely in such a manner as the Council may determine from time to time;
  - (ii) be provided by the drawing of a cheque; and
  - (iii) not exceed the limit determined by the Council.
- (e) The Secretary shall prepare and submit quarterly to the General Secretary, statements of the income and expenditure.

#### CHAPTER 4

#### NEGOTIATION AND DISPUTE RESOLUTION PROCEDURES

##### 13. Application

- (1) These procedures apply to all disputes that arise within the scope of the Council except disputes in respect of those matters that:
  - (a) are regulated by uniform rules, norms and standards that apply across the public service;
  - (b) apply to terms of service that apply to two or more sectors.
  - (c) are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector;
  - (d) are not capable of being determined by the Council as the employer or employers in the Council do not have the requisite authority to resolve the dispute; or
  - (e) must, in terms of the Act, be dealt with by the CCMA.<sup>1</sup>
- (2) Any jurisdictional dispute between the PSCBC and the Council as to whether these procedures or the PSCBC's procedures apply must be referred to the Dispute Resolution Committee established in terms of section 38(1) of the Act for conciliation and arbitration.
- (3) Despite the provisions of clauses 13(1)(a) to 13(1)(d), all individual rights disputes must be dealt with by the Council.

##### 14. Disputes of interest

- (1) **Negotiation procedures for parties to the Council on matters of mutual interest**
  - (a) Any party may submit proposals for the conclusion of a collective agreement in the Council.
  - (b) Within 7 days of the submission of the proposals the General Secretary must serve copies of the proposals on the parties to the Council.
  - (c) The Chairperson of the Council must call a meeting of the Executive Committee, within 10 days of the General Secretary receiving the proposals.
  - (d) The Executive Committee must set the agenda for the next meeting of the Council. Should the Executive Committee be of the view that some of the issues submitted to the Council should not be included on the agenda the matter will be referred to the Council for a decision. The Council will decide whether these issues must be included on the agenda, or whether to refer them to the relevant forum.
  - (e) If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion, of an item on the agenda of the Council, that party may refer the matter to the Dispute Resolution Committee established in terms of section 38(1) of the Act.
  - (f) At the first meeting of the Council, the Council must try to agree on a negotiation process which may include the following issues:
    - (i) the submission of counter proposals;
    - (ii) the establishment of a negotiation committee;
    - (iii) the appointment of a conciliator, if necessary, to facilitate the negotiations and chair the meetings; and
    - (iv) the time table for negotiations.

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<sup>1</sup> The following disputes are not dealt with by the ELRC. They must, in terms of the Act, be dealt with by the CCMA.

- a) Disclosure of information – sections 16 and 189 of the Act
- b) Organisation rights – chapter III part A of the Act
- c) Agency shop disputes – section 25 of the Act
- d) Closed shop disputes – section 26 of the Act
- e) Interpretation or application of collective bargaining provisions – section 65(1) of the Act
- f) Picketing disputes – section 69 of the Act
- g) Workplace forum disputes – section 86 and 94 of the Act

- (g) In the event of the Council not agreeing on a negotiating procedure, the parties must, within two days, commence negotiations in the Council.
- (h) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Council, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
- (i) Subject to clause 14(1)(f) above, if any one of the parties declares a dispute the General Secretary must appoint a conciliator and convene a dispute meeting which the conciliator must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
  - (i) further conciliation meetings to settle the dispute;
  - (ii) the referral of the dispute to voluntary arbitration; and
  - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.
- (j) If no collective agreement exists the conciliator must try to get agreement on:
  - (i) rules about the conduct of a strike or lockout, if applicable; and
  - (ii) picket rules, if applicable.
- (k) If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
- (l) At least any one of the parties must give seven days notice to the Council in the case of a lawful strike or lockout.
- (m) Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 14(1)(h):
  - (i) require the employer not to implement unilaterally the change to terms and conditions of employment; or
  - (ii) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
  - (iii) the employer must comply with this requirement.
- (n) If the dispute must be referred to arbitration, the procedures contained in clause 16(2) apply.

**(2) Negotiating procedure for parties to a Chamber on matters of mutual interest**

- (a) Any party to a Chamber may submit proposals for the conclusion of a collective agreement in a Chamber.
- (b) Within 7 days of the submission of the proposals, the Secretary of the Chamber must serve copies of the proposals on the parties to the Council.
- (c) At the first meeting of the Chamber after the submission of the proposals, the Chamber must try to agree on a negotiating process and time table.
- (d) In the event of the Chamber not agreeing to a negotiating procedure, the parties must, within 2 days, commence negotiations in the Chamber.
- (e) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Chamber, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
- (f) The provisions of clauses 14(1)(i) to 14(1)(n) apply with the necessary changes required by the context.

**(3) Procedure for mutual interest disputes in respect of non-parties to the Council**

- (a) In this clause a dispute means any disputes of interest, other than one contemplated in clauses 14(1) and 14(2) above, between the employer or employers and a non-party to the Council, which concerns a matter of mutual interest contemplated in section 134 of the Act.
- (b) If there is a dispute about whether or not a matter is a matter contemplated in section 134 of the Act the dispute must be referred to expedited arbitration in terms of clause 16(2).
- (c) If the dispute is about a refusal to bargain, a party to the dispute may request the conciliator to issue an advisory award and the conciliator must issue the advisory award:
  - (i) within 14 days of the request; and
  - (ii) before notice is given in terms of section 64(1) of the Act.
- (d) If the parties do not conclude a collective agreement by the expiry of the 30-day period, any party may declare a dispute. The General Secretary must convene a dispute meeting that the conciliator must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
  - (i) further conciliation meetings to settle the dispute;
  - (ii) the referral of the dispute to voluntary arbitration; and
  - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.



- (e) If no collective agreement exists the conciliator must try to get agreement on:
  - (i) rules about the conduct of a strike or lockout, if applicable, and
  - (ii) picketing rules, if applicable.
- (f) If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
- (g) At least any one of the parties must give seven days notice to the Council in the case of a lawful strike or lockout.
- (h) Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 14(3)(d):
  - (i) require the employer not to implement unilaterally the change to terms and conditions of employment;
  - (ii) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
  - (iii) the employer must comply with this requirement.

#### 15. Disputes of right

- (1) In this clause, a dispute means any dispute, other than a mutual interest dispute contemplated in clause 14, that must be referred to the Council for:
  - (a) conciliation;<sup>2</sup>
  - (b) arbitration;<sup>3</sup> or
  - (c) conciliation and arbitration.<sup>4</sup>
- (2) If the dispute is one that is contemplated in terms of clause 15(1)(a), the conciliation procedure contained in clause 16(1) applies.
- (3) If the dispute is one that is contemplated in terms of clause 15(1)(b), the procedure contained in clause 16(2) applies.
- (4) If the dispute is one that is contemplated in terms of clause 15(1)(c), the procedure contained in clause 16(3) applies.

#### 16. Conciliation and arbitration procedures

##### (1) Conciliation by the Council

- (a) Subject to clause 16(1)(b), a party to a dispute may refer a dispute, as contemplated in clauses 15(1)(a) and 15(2), in writing, on appropriate forms as prescribed by Council, to the General Secretary for conciliation of that dispute.
- (b) The referral must be made within 45 days of becoming aware of the dispute, subject to the proviso that a party may not refer a Schedule 7 item 2(1)(a) unfair labour practice dispute before invoking the grievance procedure and allowing at least 30 days for resolution thereof.
- (c) The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (d) In the event of a Schedule 7 item 2(1)(a) unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.
- (e) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that the referral has been properly served, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
  - (i) appoint a conciliator to attempt to resolve the dispute through conciliation within 45 days of the date of the registration;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.
- (f) If the parties to a dispute have agreed on a particular conciliator, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within the 45 day period or any agreed period. If the parties do not agree upon a conciliator the General Secretary shall appoint the conciliator.

<sup>2</sup> Disputes contemplated are those that must be conciliated by the Council and may be referred to the Labour Court for adjudication. For example, dismissals for operational requirements or automatically unfair dismissals or dismissals for participating in an unprotected strike section 191(5)(b) Schedule 7, item 2(1)(a) unfair labour practice disputes.

<sup>3</sup> Disputes concerning the interpretation of the Constitution, subject to clause 20(1).

<sup>4</sup> Disputes contemplated are those disputes that the council must conciliate and arbitrate. For example, dismissals for misconduct and incapacity – see section 191(5)(a) item 2(1)(b) to (d) of Schedule 7 – unfair labour practice disputes. Section 23 – disputes arising out of the interpretation or application of a collective agreement.

- (g) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
  - (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute immediately if the parties request the conciliator, in writing on the Council's prescribed forms, to do so.
- (h) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
- (i) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may:
  - (i) dismiss the matter;
  - (ii) continue with the conciliation in the absence of the party; or
  - (iii) adjourn the conciliation to a later date.
- (j) At the conclusion of the conciliation, the Conciliator must either:
  - (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator, OR
  - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND
  - (iii) issue the General Secretary of Council, not later than two (2) ordinary days thereof, with the original documents, as required by 16 (1)(j)(i) and (ii) above, OR
  - (iv) if the parties requested the conciliator to arbitrate the dispute, having had regard to the Council's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings, and it must be signed by the conciliator/arbitrator.
- (k) After the conclusion of the conciliation, the Council will not process the dispute any further, unless at the request of both parties to further explore conciliation or voluntary arbitration through Council.
- (l) If an arbitration award is issued in terms of either clause 16 (1) (j)(iv) or clause 16 (1)(k), the General Secretary must serve a copy of the award on each party to the dispute within 14 days of conclusion of the proceedings or as soon thereafter as possible.

**(2) Arbitrations by the Council**

- (a) Subject to clause 16(2)(b), a party to a dispute, as contemplated in clauses 15 (1)(b) and 15 (3), may refer the dispute, in writing, on the appropriate forms as prescribed by Council, to the General Secretary for arbitration of that dispute.
- (b) The referral must be made within 45 days of becoming aware of the dispute.
- (c) The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (d) If the parties to a dispute have agreed on an arbitrator or arbitrators, the General Secretary must appoint the person or persons agreed upon. The onus for reaching an agreement about who is to be the arbitrator rests with the parties. Upon an application by a party the General Secretary may appoint more than one arbitrator, provided that the nature of the issue in dispute and/or the financial implications of the dispute justifies this.
- (e) Should the parties not agree upon the arbitrator within 10 days of the date of the registration of the dispute, the General Secretary shall appoint an arbitrator.
- (f) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that referral has been properly served the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
  - (i) appoint the arbitrator or arbitrators to arbitrate the dispute;
  - (ii) set the matter down for arbitration within 45 days of the registration of the dispute.
- (g) The General Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.
- (h) The arbitrator may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation.
- (i) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (j) In any arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the

employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.

- (k) If the party to the dispute fails to appear in person, or to be represented at the arbitration proceedings the arbitrator may –
  - (i) dismiss the matter; or
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date.
- (l) Within 14 days of the conclusion of the arbitration proceedings –
  - (i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.
  - (ii) the General Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
  - (iii) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.

### (3) Conciliation and arbitration by the Council

- (a) Subject to clause 16(3)(b), a party to a dispute, as contemplated in clauses 15(1)(c) and 15(4), may refer the dispute in writing, on the appropriate forms as prescribed by Council, to the General Secretary for conciliation and arbitration of that dispute.
- (b) The referral must be made within 90 days of becoming aware of the dispute, subject to the proviso that a party may not refer a dispute, except a dismissal dispute, before invoking the grievance procedure and allowing at least 30 days for resolution thereof.
- (c) Notwithstanding clause 16(3)(b), a dispute about a dismissal must reach the General Secretary within 45 days of the employee being informed of the dismissal.
- (d) The party who refers the dispute must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (e) The party who refers the dispute, other than a dismissal dispute, must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.
- (f) If the General Secretary is satisfied that the dispute is a dispute in terms of its Constitution and that the referral has been properly served, the General Secretary must register the dispute, by recording it in a Dispute Register, and thereafter:
  - (i) appoint an arbitrator;
  - (ii) set the matter down for arbitration within 45 days of registering the dispute;
  - (iii) appoint a conciliator; and
  - (iv) set the matter down for conciliation no less than 14 days before the arbitration.
- (g) The General Secretary may appoint the same person to conciliate and arbitrate the dispute if that person is a member of both panels appointed in terms of clause 16(6).
- (h) The timeframes referred to in clauses 16(3)(b) and (c) may be extended by the General Secretary, where there is a successful condonation application, relating to the late referral of that dispute.

#### Conciliation

- (i) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
  - (i) mediating the dispute;
  - (ii) conducting a fact-finding exercise;
  - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (iv) arbitrating the dispute immediately if the parties request the conciliator, in writing on the Council's prescribed forms, to do so.
- (j) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
- (k) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may:
  - (i) dismiss the matter;
  - (ii) continue with the conciliation in the absence of the party; or
  - (iii) adjourn the conciliation to a later date.

- (l) At the conclusion of the conciliation, the Conciliator must either:
  - (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator, OR
  - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND
  - (iii) issue the General Secretary of Council, not later than two (2) ordinary days thereof, with the original documents as required by clauses 16 (3)(l) (i) and (ii) above, OR
  - (iv) if the parties agreed, in writing, to immediate arbitration in terms of Clause 16(3)(i)(iv), having regard to the Council's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings and it must be signed by the conciliator/arbitrator.
- (m) In the event of immediate arbitration, the General Secretary must, within 14 days of conclusion of the proceedings or as soon as possible thereafter, serve a copy of the award on the parties.
- (n) If the dispute remains unresolved at the end of conciliation, the referring party must indicate in writing, within 4 working days, on appropriate forms as prescribed by Council, that the scheduled arbitration must proceed. The "Outcome Form for a Dispute referred to the ELRC for Conciliation", referred to in clause 16(3)(l)(ii), must be attached to the application for arbitration.

#### **Arbitration**

- (o) In respect of pre-arbitration pleadings, the onus rests with the parties to address this matter, prior to the date already scheduled for arbitration, of the said dispute.
- (p) The arbitrator may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
- (q) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- (r) Subject to clause 16(3)(s) below, in these arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.
- (s) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the educator's conduct or capacity, the parties, despite clause 16(3)(r) above, are not entitled to be represented by a legal practitioner in these arbitration proceedings unless:
  - (i) the arbitrator and all the other parties consent; or
  - (ii) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:
    - (aa) the nature of the questions of law raised by the dispute;
    - (bb) the complexity of the dispute;
    - (cc) the public interest; and
    - (dd) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
- (t) If the party to the dispute fails to appear in person, or to be represented at the arbitration proceedings the arbitrator may –
  - (i) dismiss the matter; or
  - (ii) continue with the arbitration proceedings in the absence of the party; or
  - (iii) adjourn the arbitration proceedings to a later date.
- (u) Within 14 days of the conclusion of the arbitration proceedings –
  - (i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.
  - (ii) the General Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
  - (iii) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.

#### **(4) Recording of conciliation and arbitration proceedings**

- (a) The Council will not provide any recording facilities at conciliation or its related activities.

- (b) Subject to clause 16(4)(c), the Council shall, upon request, provide mechanical recording facilities, at the cost of Council, for arbitration proceedings.
- (c) The General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in Council.
- (d) The Council will not provide any transcripts of such recordings, unless the requesting party is willing to cover the costs of Council related to the production of such transcripts.
- (e) The Council shall keep the mechanical recordings, in a place determined by the General Secretary, and such recordings may only be available to the parties for a period not exceeding 180 ordinary days, from the date of its production.
- (f) The mechanical recording and the transcript shall be the property of the Council.
- (g) The Council reserves the right to destroy the recordings after the 180 ordinary days referred to in clause 16(4)(e).

**(5) Costs**

- (a) Subject to clause 16(5)(b), the Council will pay the costs of the conciliators' and arbitrators' proceedings, in terms of the Council's Policy.
- (b) If an arbitrator finds that a dismissal is procedurally unfair the arbitrator may charge the employer an arbitration fee<sup>5</sup>.
- (c) Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- (d) If the arbitrator is satisfied that a party has acted unreasonably, wasted costs or referred the dispute to arbitration without reasonable cause, the arbitrator may, on application by either party or Council, make an appropriate order for costs, including the costs of the arbitration.
- (e) Costs awarded by the arbitrator may include –
  - (i) the costs of the arbitration;
  - (ii) legal and professional costs and disbursements;
  - (iii) other expenses which a party has incurred in the conduct of the dispute; and
  - (iv) expenses of witnesses.

**(6) Panels of conciliators and arbitrators**

- (a) Subject to the Act, the Council may, at any its meetings, for a period of one year at time, appoint, from nominations received from the parties:
  - (i) a panel of conciliators to conciliate disputes;
  - (ii) a panel of arbitrators to arbitrate disputes.
- (b) In making these appointments the Council must ensure that the panels–
  - (i) are drawn from each of the nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of educators employed in the national and provincial departments in the various provinces;
  - (ii) have skill and experience in labour relations, knowledge about the education sector and knowledge or experience in conciliation and arbitration;
  - (iii) are broadly representative of South African society.
- (c) All conciliators and arbitrators will conduct themselves in accordance with the Code of Conduct in Schedule 1.
- (d) The Council may remove a member of the panels from office because of incapacity.
- (e) If for any reason there is a vacancy in a panel, the Council may, subject to the Act, appoint a new member to the relevant panel for the unexpired term of office.
- (f) A member of the panel, whose term of office expires, may be eligible for re-appointment.
- (g) If the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the CCMA who must appoint a suitably qualified person to fill the vacancy.

**(7) Extension of time periods and condonation**

- (a) The Council may require the referring party to set out in writing, on the appropriate forms as prescribed by the Council, the application for condonation of a late referral of a dispute.
- (b) Any late referral or application may be condoned on good cause shown, by an arbitrator appointed for that purpose. Such an arbitrator must be appointed by the General Secretary from the agreed panel of arbitrators.

<sup>5</sup> Section 140(2) of the Act provides this power to commissioners of the CCMA. This is a comparable power provided to arbitrators appointed by the Council.

- (c) Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- (d) If a party does not comply with the timeframes set in this Constitution because it is involved in resolving the matter through the grievance procedures, then this will constitute good cause for condonation.
- (e) An arbitrator adjudicating a condonation application must determine the application, as far as it is reasonably possible, by means of written submissions from the parties.

#### CHAPTER 5

#### 17. Strikes, lock-outs, picketing and protest action

- (1) Every employee has the right to strike and every employer has recourse to lock-out if:
  - (a) the issue in dispute has been referred to the Council;
  - (b) the Council has issued a certificate stating the dispute remains unresolved, or a period of 30 days, which may be extended by agreement, has lapsed, since the referral was received by the Council; and
  - (c) 7 days notice of the commencement of the strike or lock-out has been given to the employer or the trade unions, as the case may be, and the Council.
- (2) Parties shall comply with a code or codes of practice as provided for by the Act or as contained in any collective agreement.

#### CHAPTER 6

#### 18. Financial matters of the Council

- (1) On or before the 15<sup>th</sup> day of September of each year, the various committees of Council must submit their inputs on the budget for the following year to the General Secretary. A draft budget must then be submitted to a special meeting of the Executive Committee via the Finance Committee.
- (2) The budget of Council shall also make provision for the administration and functioning of Chambers.
- (3) The General Secretary, shall, during the first week of December of each year, submit to a special meeting of Council an annual budget which must be approved at such a meeting.
- (4) The expenses of the Council shall be met from a fund or funds, which shall be raised by levies on employers and employees; Provided that such levies may be revised and adjusted by the Council from time to time.
- (5) The employer shall pay monthly, per employee, an amount agreed to by the parties to the Council into the fund or funds referred to in clause 18(4) above.
- (6) The employer shall deduct monthly per employee a levy agreed to by the parties to the Council which shall be paid into the fund or funds referred to in clause 18(4) above.
- (7) All monies received on behalf of the Council shall be deposited to the credit of the Council with a registered bank approved by the Council.
- (8) Monies received by the Council from levies imposed in terms of clauses 18(4), (5) and (6) above shall firstly be applied to meet the monthly expenditure budget of the Council, and monies not so applied shall:
  - (a) at the discretion of Council, be used for Council activities including research and development, training and other activities that enhance collective bargaining; or
  - (b) be invested in accordance with section 53(5) of the Act.
- (9) All disbursements to be made from the funds of the Council shall be approved by the Council and shall be paid in any legal tender.
- (10) Funds required for a petty cash account shall –
  - (a) be kept safely in such a manner as the Council may determine from time to time;
  - (b) be provided by the drawing of a cheque; and
  - (c) not exceed the limit determined by the Council.
- (11) A financial report of the books of Council shall be prepared by the Finance Committee of Council as at the end of June each year, in accordance with accepted accounting practice, showing monies received and expenditure incurred over the preceding six months. A full audit of the books of Council must be prepared as at the end of December of each year.
- (12) The General Secretary shall, prior to the Annual General Meeting of each year, in respect of the previous financial year, prepare the financial statements of the Council in accordance with accepted accounting practice, showing moneys received and expenditure incurred.
- (13) The financial year of the Council shall be from 1 January of a particular year to the last day of December of the same year.

Addendum D: Minutes of the ELRC, KZN Chamber



# Education Labour Relations Council KwaZulu Natal Chamber

elrc

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## Minutes

Meeting: Chamber Meeting  
Date: 07 February 2003  
Venue: Durban Teachers' Centre

### 1. Welcome

The chairperson of the meeting, Mr. V.I. Ngidi, welcomed all delegates to the meeting and commenced proceedings with a prayer conducted by Mr. B.H. Mthabela.

### 2. Attendance

As per register

### 3. Apologies

Mr. L. Lotz	
Mr. N. Gcwabaza	- would be late
Mr. Ramcheron	- would be late
Mr. P. Gwamanda	
Dr. Nzama	
Mr. M.B. Mnguni	
Ms. Z.F. Zulu	- would be late
Mr. F. Ingram	- would be late
Mr. Mathonsi	would be late

### 4. Adoption of the Agenda

The secretary requested that the agenda include 'Correspondence' as item 5 and the numbering be adjusted accordingly. All parties agreed.

Mover: Mr. Mpungose  
Seconder: Mr. N.G. Ngcobo

### 5. Correspondence

The secretary read the correspondence from Mr. D. Govender who requested permission to observe some chamber meetings as part of his academic research. Parties expressed concern that Mr. Govender would not be accountable in any way to parties represented in chamber.



The request was denied and it was suggested that Mr. Govender interview leaders of parties or gain entry via one of the parties to chamber.

### **Decisions**

- 1. The request by Mr. Govender to observe Chamber meetings be denied and the secretary of chamber informs Mr. Govender accordingly.**

### **6. Adoption of the Minutes of the Previous Meetings**

The minutes of 05 December 2002 was corrected in order to reflect that a Stanco meeting was to have been convened in order to allow the employer to seek a fresh mandate.

Mover:           The Secretary  
Secunder:        Mr. Mpungose

**Matters Arising:** The secretary explained that the transcript of the meeting of 15 November 2002 had been obtained and presented to Stanco. He indicated that it was a bulky document and that legal opinions on the transcript would be time-consuming and could cause chamber to become dysfunctional.

### **Minutes of the meeting of 15 November 2002**

The Employer proposed that the last 7 lines on page 14 be reflected on page 19 after the decisions.

It was stated by the Employer that the proposed the amendment was a compromise in order to ensure that chamber continues to function and that nothing that was articulated by the employer was being withdrawn.

Mr. Mpungose seconded the motion.

The secretary moved for the adoption of the minutes and SAOU seconded its adoption.

Sadtu questioned the logic of changing the location of the paragraph since minutes ought to be reflected in chronological sequence.

The employer indicated that the matter was dealt with and that the chair should rule.

The chairperson explained that the amendment was moved and seconded and that there were no objections.

Sadtu explained that the sound of the air conditioner had disadvantaged them as they did not hear the issue clearly.

After some discussion on the matter and after it was explained that the decisions were left unchanged the matter was resolved although Sadtu maintained that the minutes should be seen in its entirety and that the order should not be changed.

### **7.1 Stanco Report**

The report was presented by the secretary.

The employer questioned whether the presentation to the senior officials had to be collated by Mrs. Dlamini.

Naptosa indicated that the collation of the presentation was to be done collectively.

The secretary moved for the adoption of the report and Naptosa seconded the adoption.

The employer proposed that a small task team be established to refine the Meeting Procedure document.

SAOU seconded the motion.

Sadtu suggested that the task of refining the document be given to Stanco and they could co-opt expertise should it be necessary.

Recommendation 1 of the report was moved by Naptosa and seconded by the Employer. There were no objections.

Recommendation 2 of the report was moved by Sadtu and seconded by the Employer. There were no objections.

The employer indicated that they would encounter problems with chamber meetings in consecutive months since the same officials were also involved in the GPSSBC chamber.

The matter was referred back to Stanco.

#### **Decisions**

- 2. A Special Projects Committee of Chamber be created to plan, organize and co-ordinate the special projects to commemorate Women's Day, Youth Day and World Teacher's Day.**
- 3. The Displaced Educator Committee be resuscitated in order to:**
  - Monitor implementation of the agreement.**
  - Review HRM 12 of 1997.**
- 4. The year plan of Chamber be referred back to Stanco.**

- 5. The 'Rules of Procedure for Chamber Meetings' document be referred to Stanco for refinement and Stanco co-opts persons with the necessary expertise if necessary.**

## **7.2 Promotions Committee Report**

The Promotions Committee report was presented by Dr. Hlatshwayo.

Mover: Dr. Hlatshwayo  
Seconder: Naptosa

The following corrections were effected:

- p.1 – the word 'legislation' replaced 'registration'.
- p.2 – second paragraph, first line – include 'decided by employer' and second sentence be regarded as recommendation 2 and other recommendations be renumbered accordingly.
- Recommendation 1 should have been in two parts, viz. the investigation on:
  1. Policy guiding appointments at Teachers' Centres and
  2. The employer's decision to appoint persons to such posts outside of a policy, and a decision of chamber to the contrary.

The employer proposed that all committees meet prior to chamber to finalize reports to chamber.

The proposal was supported unanimously.

## **Decisions**

- 6. All committees of Chamber must meet prior to the chamber meeting to finalize the report to chamber.**

Sadtu moved for the adoption of Recommendation 1 of the report, with the necessary amendments.

The Employer sought clarity on:

- Who actually does the investigation, and
- Whether a policy for filling of posts at Teachers' Centres existed as suggested by Sadtu.

SAOU clarified that the recommendation actually meant 'without a policy' rather than 'outside of a policy'.

SADTU further clarified that the employer would conduct the investigation and labour would receive the report from the employer.

SAOU seconded Recommendation 1 as amended and there were no objections.

#### **Decisions**

**7. The employer would conduct an investigation on:**

- **The policy guiding the filling of posts at Teacher's Centres**
- **The decision to appoint educators into posts at Teacher's Centres in the absence of a policy and despite a Chamber decision to place the filling of such posts on hold.**

After some discussion on item 2.3 of the report, parties agreed that the last 3 lines of item 2.3 was actually a recommendation of the committee.

The Employer indicated that:

- The dates of 18<sup>th</sup> and 20<sup>th</sup> were not available for workshops.
- It was agreed in committee that workshops would be held and that the dates would be finalized.

SAOU indicated that the workshops could not be held after the 20<sup>th</sup> as it would disrupt the management plan.

Recommendation 2 was moved by Sadtu and seconded by the employer.

#### **Decisions**

**8. The workshops on the Promotions Procedure Manual be held prior to 20 February 2003 so that the management plan would not be compromised.**

The employer advised that 'Director: Provisioning' in item 2.4 of the report be amended to read 'Director: Education Management Services'.

NAPTOSA advised chamber that the recommendation under 2.4 of the report was merely one part of the recommendation and that acting personnel at schools should continue to act until such posts were substantively filled, was the main part of the recommendation.

All parties agreed.

The Employer indicated that they would investigate allegations that the director 'said' and not 'issued a notice' that Res. 8 of 2001 had been placed on hold.

The recommendation was moved by the Employer and seconded by SADTU.

**Decisions**

- 9. Decision 6 of the Chamber Meeting of 15 November 2002 be amended such that all acting personnel at schools continue to act until the new incumbents assume duty as per management plan outlined in HRM 4 of 2003.**
- 10. The Employer would investigate allegations that the Director : Education Management Services, had stated that Resolution 8 of 2001 had been placed on hold.**

Sadtu requested the employer to explain the reasons for filling only 6 of the 74 posts advertised in HRM 52 of 2002.

NAPTOSA indicated that the matter was discussed at the committee meeting and that the employer was only prepared to release District and Circuit posts but not Regional Office posts owing to the restructuring process.

SADTU explained that the committee was unable to resolve the issue and therefore the matter had to be debated at chamber.

SADTU, seconded by SAOU, proposed that all 74 posts advertised in HRM 52 of 2002 be released.

The employer explained that:

- Only District and Circuit posts could be released.
- The restructuring may result in educators being in declared surplus and therefore it would be prudent to stay the filling of Regional Office posts

Naptosa supported staying the filling of posts but enquired what would happen after restructuring.

The employer responded that posts that continued to be vacant after restructuring would either be re-advertised or released depending on the circumstances.

Sadtu explained that:

- Promotions were a matter of mutual interest.
- The employer had not tabled any motion on restructuring or on placing a moratorium on the filling of posts.
- Posts were advertised in terms of an agreed upon procedure and management plan and the employer was obliged to fill those posts.
- Should circumstances change, the employer must place a motion on the table for discussion.

Recommendation 4 was adopted on the motion of Dr. Hlatshwayo, seconded by the Employer.

**Decisions**

- 11. The Employer would furnish all statistics pertaining to HRM Circular 52 of 2002 at the next Promotions Committee meeting.**

Sadtu reminded the meeting that their motion was still on the table.

After much discussion it seemed unlikely that the matter would be resolved and the matter was referred back to the committee.

**Decisions**

- 12. The issue of filling of vacancies advertised in Circular HRM 52 of 2002 be referred to the Committee for discussion.**

Recommendation 5 was moved by NAPTOSA and seconded by SADTU.

**Decisions**

- 13. A Procedure Manual for the appointment of Acting Personnel to Office-Based Posts be developed.**

Naptosa complained that:

- Many posts that were vacant were not advertised in HRM 4 of 2003.
- Districts indicated that they had supplied all vacancies to the region.
- HRM insist that all vacancies received from the regions were advertised.
- C.V. forms were missing in some districts.

Dr. Hlatshwayo confirmed that forms were missing in some districts but that the matter was corrected.

Naptosa indicated that labour requested an addendum to the bulletin that would advertise all posts that were omitted from the original bulletin.

Dr. Hlatshwayo indicated that an addendum would not be a problem provided that labour furnishes the specifics required.

NAPTOSA advised the meeting that the EC 1 form had many errors and that the form was confusing. He proposed that a committee meeting be held to ensure that the confusing aspects are addressed.

All parties were in agreement.

NAPTOSA proposed that the issue of the addendum be addressed at the same meeting.

Parties agreed that the committee was mandated to address the issues of the forms and the addendum and there would not be a need for another chamber decision prior to implementation.

#### **Decisions**

- 14. The Promotions Committee must meet and make the necessary changes to the forms, especially EC1, and to address the issue of an addendum to accommodate posts omitted from the bulletin.**

#### **7.3 PPN Committee Report**

The PPN Committee report was presented by Mrs. M. Dlamini.

Mover: Mrs. Dlamini  
Secunder: Mr. Mdletshe

NAPTOSA expressed concern that although space was available many learners were not accommodated at schools owing to the PPN. They suggested that the Department communicate to the public that additional educators would be provided to schools should increased enrolment warrant additional personnel.

SADTU indicated that:

- Chamber needed to take a decision concerning additional personnel for increased enrolment.
- A Nedlac agreement that every class must be provided with an educator existed.
- 75000 posts were created whilst 62000 educators existed meant that 13000 posts ought to have been advertised.
- The 5000 posts advertised was far less than the number that ought to have been advertised.

Naptosa indicated that the report had not captured the recommendations on:

- Increased enrolment.
- Request for statistics on no. of permanent educators, protected temps., unprotected temps., substitutes, etc.
- All vacancies must be advertised.

Mrs. Dlamini indicated that the report was circulated to parties but no response had been received from labour.

Labour complained that they had only received the report the previous afternoon and therefore had no opportunity to respond.

Mrs. Dlamini reported that:

- PERSAL could not distinguish between the different categories of Temporary educators.
- The NDA is not recorded on PERSAL hence it was difficult to identify those educators that were protected.
- In 2002 over 1000 educators were employed above the norm.
- Many temps. occupy posts against vacant promotion posts.
- The 6000 posts reported in the media did not take into account approximately 2000 surplus educators that had to be accommodated.
- It was not possible to provide an accurate synopsis currently.

SADTU explained that:

- The PPN for each institution was not understood by the heads of the institutions. *The department should therefore provide full explanations.*
- The meeting with senior officials needed to occur soon in order to increase the number of educators employed by the province.
- The proposal that the employer presented to chamber was 35.63:1 but the one implemented was 35.7:1.
- The proposal presented by labour needed to be debated.
- The curriculum transformation posts needed to be resolved.

The employer indicated that some of the issues raised was not discussed at the committee meeting and therefore could not be part of the report.

The chair indicated that the meeting should first look at the report and thereafter look at the new issues raised.

The report was thereafter adopted.

Mover: Mrs. Dlamini  
Seconded: The Employer

Mrs. Dlamini indicated that:

- Every school received an explanation on the manner in which the PPN was calculated.
- Delay in meeting the senior officials was not the fault of the employer.
- Parties had not honoured the meeting scheduled for the fifth.
- Since 702 posts were reallocated most schools should not have lost the CTPs.



- The required statistics would be provided at the meeting of 21 Feb. 2003.

### **Decisions**

**15. The employer shall provide all the necessary statistics concerning the number of educators and the various categories of temporary educators employed by the Department.**

On being questioned by labour on provision of personnel for increased enrolments, the employer responded that:

- SEMs visit schools and know the procedures to address staff shortages.
- Those that requested additional personnel received such educators.
- Regional co-ordinators would meet on the 12<sup>th</sup> of February 2003 and the deviations between the actual enrolment and the one on which the PPN was based, would be studied.
- The Department was obliged to make optimal use of all resources.

Naptosa contended that there was miscommunication on the ground and that the number of surpluses was not requested from schools when the 10<sup>th</sup> day statistics were submitted.

Sadtu complained that:

- Many learners were not taught for the past 4 weeks.
- SEMs had informed principals that they were instructed not to provide more educators to schools.
- NDR had submitted recommendations to HRM.
- One school in Inanda had 150 learners in one class because the employer had not provided more educators.
- It was criminal to have 150 educators in one class.
- DMs must be instructed to provide sufficient educators so that learners may be taught.

Mrs. Dlamini informed the meeting that HRM had received submissions from Ulundi but not from NDR.

The Employer advised the meeting that whilst enrolment at some schools may have increased, the enrolment at other schools would have dropped and therefore movement of educators must be considered.

NAPTOSA commended the employer for addressing the issue of payment of temporary educators in some areas.

They indicated that applications from schools for more educators were blocked by managers.

After much discussion on the matter it was finally resolved that the matter be referred to the committee.

#### **Decisions**

- 16. The issue of accommodating an increased number of learners by providing more educators be referred to the committee for both a short and long term solution and the increased enrolment be accommodated by means of temporary appointments in the interim.**

SADTU indicated that the issue of schools not having curriculum transformation posts (CTPs) created problems since schools had introduced new subjects and were forced to discontinue such subjects. They suggested that the matter be addressed by the Staffing Committee.

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SADTU further indicated that they were awaiting the employer's response to Labour's proposal on the PPN.

The chairperson indicated that the issue was part of the brief of the meeting with senior officials.

Recommendation 1 of the PPN Report was adopted.

#### **Decisions**

- 17. Inputs on HRM 63 to be submitted to HRM by 14 February 2003 for discussion at the meeting on 21 February 2003.**

#### **7.4 Grade-R Committee Report**

No report was presented to chamber.

#### **7.5 Skills Development Committee Report**

No Report was presented to Chamber

#### **7.6 Employment Equity Committee Report**

The report was presented by Mandla Msweli.

After a brief discussion it was established that:

- An Employment Equity Committee needed to be constituted.
- Mr. T.L. Hlela be the convener of the committee.

Mover: The Employer

Secunder: Sadtu

The committee would have, *inter alia*, the following terms of reference:

- An analysis of under-representation of designated groups.
- Development of an EE Plan and Policy for Educators.

SAOU indicated that no document on CS educators related to employment equity should be submitted to the CEO for signature until the Committee had met.

### **Decisions**

#### **18 An Employment Equity Committee of Chamber be established to:**

- **Draft an Affirmative Action Policy for Educators.**
- **Analyse the representation or under representation in the various occupational classes and levels.**
- **Provide a definition of the workplace.**
- **Draft an Employment Equity Plan and Policy for Educators.**

#### **19. The Employment Equity Committee be chaired by Mr. T.L. Hlela.**

#### **7.7 Dispute Prevention Committee**

No report was presented to Chamber

#### **7.8 FET Committee Report**

The employer proposed that the presentation of the report be deferred to the next meeting since the convener was unavailable.

Naptosa seconded the proposal.

#### **7.9 DAS Committee Report**

No Report was presented to Chamber.

### **8. Restructuring of the Department of Education**

The Employer indicated that:

- A consultation workshop on restructuring was held on 05 February 2003.
- Labour had raised a number of concerns, especially the provision of information.
- On the morning of the chamber meeting, the employer received a document from labour, acting collectively, requesting much more information.
- The employer was nearing completion regarding the first set of information requested but needed more time to include the additional information requested.

- The information could be provided at a meeting with labour on 11 February 2003.

Labour raised the concern that the process of implementation seemed to continue without the necessary consultation with labour.

The employer indicated that the Public Service Unions had endorsed the process and it would continue implementation in the Public Sector but implementation in the Educator Sector would be preceded by consultation.

Labour advised that:

- The Public Service and the Educator Sector should not be addressed separately as each had an impact on the other.
- Separate implementation would make interdepartmental transfers problematic.
- Since Labour was being consulted after some decisions were taken, Labour's input must be factored into the process.
- Schools would be serviced by offices in different locations.

The Employer indicated that:

- They were aware of Labour's concerns.
- Issues were raised on 15 November 2002 and proposals for a DTT were rejected.
- They were consulting in good faith and that consideration would be given to proposals and where labour's proposals could be accepted it would be accepted.
- Where proposals could not be accepted, the employer would provide labour with reasons.

The meeting was set for Tuesday, 11 February 2003, at Dokkies.

#### **Decisions**

- 20. A meeting between the and labour and the Department be convened on Tuesday, 11 February 2003 at Dokkies commencing at 09h00 where the additional information requested by labour could be provided.**

**9. Absorbed Educators**

The employer indicated that the leave for all educators was being audited and a report would be presented thereafter.

**10. Date of the Next Meeting**

It was agreed that the matter be addressed by Stanco.

**11. Closure**

With no other matters to discuss the chairperson thanked all parties for their attendance and participation and closed the meeting at 14h45.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date Adopted



# Education Labour Relations Council KwaZulu Natal Chamber

# elrc

P.O. Box 40045  
Red Hill, 4071

Tel (031) 5731777  
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## Minutes

Meeting: Chamber Meeting  
Date: 20 March 2003  
Venue: Durban Teachers' Centre

### 1. Welcome

The chairperson of the meeting, Mr. V.I. Ngidi, welcomed all delegates to the meeting and commenced proceedings with a prayer  
He emphasized the need for punctuality in order to complete the business of the day.

### 2. Attendance

As per register

### 3. Apologies

Mr. L. Lotz	-	would be late
Mr. Ramcheron	-	would be late
Mr. P. Gwamanda	-	would be late
Mr. Mathonsi	-	would be late
Mr. Mnguni	-	would be late
Mrs. Dlamini	-	would be late
Mrs. Khumalo	-	would be late
Mr. T.L. Hlela	-	would be late
Ms. R. Govender	-	would be late
Ms. Fisher	-	would be late
Mr. K.K. Nkosi	-	would be late
Mr. J. Mota	-	would be late
Mr. M. Ntombela	-	would be late
Mrs. Dirker	-	requested leave at 13h30

### 4. Adoption of the Agenda

Mover: Mr. Mpungose  
Seconder: Mr. N.G. Ngcobo

The agenda was thus adopted.

## **5. Adoption of the Minutes of the Previous Meetings**

The employer believed that decision 7 of the minutes was incorrect in that no previous decision of chamber indicated that the filling of posts had to be placed on hold.

SAOU advised that the minutes were accurate.

The secretary advised that the decision placed an obligation on the employer to conduct an investigation and did not necessarily mean that the appointments must be reversed.

The chairperson suggested that the minutes of 07 June 2002 be checked and should it be found that the decision required that the filling of posts be placed on hold, decision 7 remain unchanged. Should it be discovered however that the decision of 07 June 2002 did not require that the posts be placed on hold, the minutes be changed.

All parties agreed.

### **Minutes of Chamber meeting of 07 February 2003**

Mover: The Secretary.  
Seconded By: Mr. Mchunu (NAPTOSA)

### **Minutes of Special Chamber meeting of 28 February 2003**

The venue on page 1 was corrected to read 'Durban Teachers Centre.'

Mover: The secretary  
Seconded By: Mrs. Dirker (SAOU)

## **6.1 Stanco Report**

The report was presented by the secretary of Chamber.

Mover: The Secretary  
Seconded by: Mr. Mchunu (NAPTOSA)

Labour believed that the Chamber year plan with 8 scheduled meetings of chamber should remain as agreed at the strategic planning meeting.

The employer indicated that their position was that meetings be held on alternative months. They were however willing to accept the schedule provided that the September meeting discusses the need for a meeting in October 2002.

### **Decision**

1. The Chamber Year Plan, including the dates for chamber meetings, be adopted provided that the need for the October meeting be discussed at the Chamber meeting scheduled for September.

The employer proposed that the 'Meeting Procedures' document be referred back to Stanco for further discussion.

**Decision**

2. The 'Meeting Procedures Document' be referred to Stanco for finalisation.

The report was corrected to reflect that the strategic plan was adopted at the chamber meeting of 15 November 2002.

The employer moved for the adoption of the recommendation contained in the report. The recommendation was unanimously accepted.

**Decision**

3. Mrs. Dlamini and Dr. Hlatshwayo be co-convenors of the Staffing Committee until the employer provides chamber with the name of the convenor.

Labour questioned whether representatives from the Employment Equity committee would be represented on the Staffing committee.

The employer indicated that they were willing to accept such a proposal.

## 6.2 Staffing Committee Report

The first part of the report (s1-8) viz. **PPN and related issues**, was presented by Mrs. Dlamini, who moved for its adoption.

The report (s1-8) was seconded by Ms. Fisher of NAPTOSA.

Labour questioned whether the circular regarding the movement of educators was issued to all schools.

The employer responded that HRM circular 14, requesting the number of surpluses and/or shortages based on enrolment, was issued to all schools in KZN.

Labour complained that:

- Some posts were incorrectly advertised.
- Some posts were omitted from the bulletin.
- HRM 18 did not reach all schools.
- Validation was either not done or poorly done.

After some discussion on whether an addendum or a new bulletin would be more appropriate, labour felt that a new bulletin at the end of the current process would be most practical.



The employer supported the proposal that a new circular/bulletin advertising all outstanding posts be released at the end of the current process and indicated that omissions were a result of human error.

Labour clarified that:

- The end of the process was when placements were done.
- Gathering of information, collation and validation must be done in the interim.
- The employer should stress to their officials the importance of thorough validation.
- The new bulletin must be **released** at the end of the current process.

After some discussion on what was meant by 'all outstanding posts', it was finally agreed that all vacancies be advertised.

#### Decision

4. At the conclusion of the current promotion process, ie. after placement, all vacancies shall be advertised in a new circular.

Labour questioned the lawfulness of moving educators in terms of s3.2 of circular HRM 14 of 2003.

The employer indicated that the authority was obtained from the Education Laws Amendment Act 48 of 1999 wherein:

- Temporary transfer of educators was allowed.
- Educators had to return to their original schools at the end of the period.

Labour indicated that:

- Their interpretation of the legislation differed from that of the employer.
- The amendments addressed the appointment of educators at schools in the absence of recommendations from the governing bodies.
- The termination of Res. 6 means that a procedure for the movement of educators does not exist.
- The creation of a CTT was for a specific purpose at a specific time and could not be used as policy.

The employer explained that debating the legality of the movement of educators within chamber would be inappropriate however the employer would seek legal opinion and report back to chamber.

Labour responded that:

- Issues were raised to ensure that chamber acts within the legal parameters and not to engage in legal argument.
- There has been no collective agreement, since the termination of Res. 6 of 98, to regularize the movement of surplus educators.

- Negotiations are underway nationally to extend Res. 5 of 98 to address the issue of surpluses in provinces.
- It may therefore be premature to declare surpluses prior to an agreement being reached. It would be incorrect to implement a procedure whilst negotiations were proceeding on the very same issue.

The employer indicated that:

- Whilst they appreciated the concerns and inputs of labour, they were obliged to staff all schools within the financial limitations that exist.
- Some schools had a drop in enrolment whilst other schools had an increase in enrolment.
- The principles used to move educators viz. LIFO was the same that was used in the past, which labour had supported.
- Labour should provide a viable alternative, ie. without overspending, for consideration.

Labour argued that:

- Financial considerations must be balanced against fair labour practice.
- LIFO is not the only criteria that could be used.
- Resolution 6 of 1998 was terminated by Res. 2 of 2002.
- A formal proposal was not tabled by the employer.

The employer explained that:

- They were aware of negotiations at a national level.
- It would not be responsible to merely wait for national agreements and overspend in the interim.
- A proposal was tabled by the employer in 2002 but unfortunately the labour linked the issue to PPN and no agreement was reached.
- Labour must provide an alternative if they were rejecting the employer's proposal.

Labour believed that it was unfair to request an alternative from labour but that the employer should provide the document that was being implemented and provided a basis for the movement of educators and that labour would thereafter make the required inputs.

The employer indicated that the document being used was circular HRM 76 of 2002.

The meeting thereafter adjourned for lunch.

The meeting resumed with the chairperson requesting parties to focus on the first recommendation of the report.

The employer requested clarity on the objective of recommendation 1.

Labour explained that:

- The circular on transfers was released without the input of labour.
- Transfers were occurring in a disorderly fashion.
- The open vacancy list was being undermined by posts being occupied through transfers.
- Personal and Humanitarian grounds were not defined and therefore there was a need to establish a committee to consider applications so that uniformity and consistency would prevail in the granting of such transfers.

The employer advised that they would need more time to consider the recommendation.

Labour complained that:

- The hap-hazard transfers would continue in the interim
- Uniformity between the different regions and districts was absent.
- Private arrangements were made to effect transfers thereby circumventing the open vacancy list.

After much discussion it was agreed that the matter be discussed in the committee where the employer would respond to the recommendation.

#### **Decision**

- 5. The employer consults with its principals regarding the procedure for transferring educators and responds at the next Staffing Committee meeting**

Labour requested that transfers be placed on hold until the issue was resolved.

The employer indicated that they did not have a mandate to suspend the said circular.

The employer, with reference to point 5 of the report, indicated that:

- Problems existed in many districts.
- Some districts received thousands of applications and lacked capacity to sift.
- In order comply with the management plan it would be necessary to shift the sifting to Interview committees.

Labour requested a caucus to consider the proposal of the employer, which was granted.

Labour returned and expressed concern that such a move would be in violation of Resolution 5 of 1998. Labour proposed that the employer provide the requisite personnel at the district offices to complete the task.

Mrs. Dlamini proposed the adoption of the second recommendation of the report.

The employer requested clarity on how the investigation would be conducted.

SAOU advised that:

- It was the employer that made the recommendation and requested that the recommendation be presented to chamber.
- The issue also affected other provinces and was therefore a national matter.

SADTU proposed that the employer submits a proposal to the ELRC at a national level.

The employer proposed that a provincial resolution be drafted and be submitted to the council for ratification.

Labour expressed concern that the resolution may be implemented prior to ratification.

After much discussion on the matter it was finally agreed that the Staffing committee prepares a proposal in the form a draft agreement and that a clause preventing implementation prior to ratification by council, be inserted.

#### Decision

6. The Staffing Committee must prepare a complete proposal to chamber for:
  - The upgrading of Post Level 2 ex-college educators to post level 3
  - Addressing other educators from the colleges.
  - Ratification at Council prior to implementation.

The second part of the report, viz. section 8 – **Promotion Issues**, was presented by Dr. Hlatshwayo.

Naptosa indicated that the report omitted the fact that the employer stated that they had no mandate to conduct workshops on HRM 4 of 2003.

The employer denied mentioning that they had no mandate to conduct such workshops and indicated that the report ought to have been amended at the meeting prior to chamber and that it was improper to raise the omission for the first time at the chamber meeting.

NAPTOSA insisted that such statements were articulated and indicated further that the employer representatives at the committee meeting justified not having workshops because their budget did not cater for such workshops.

The employer proposed that the report be adopted.

Mr. Mpungose seconded the adoption with the inclusion of the stated omission.

NAPTOSA indicated that:

- The decision to place the filling of posts at teachers centre's on hold was adopted at the meeting of 07 June 2002.

- The employer was not correct in denying that such a decision was adopted.
- Discussion a specific case could be *sub judice* but discussion of the issue of violating a chamber decision and the procedures for filling posts at teacher's centre's cannot be *sub judice*.

SAOU observed that the matter was dragging on since 07 June 2002 and needed to be conclusively addressed.

Labour was unanimous in that a decision to pace the said posts on hold was adopted but the employer indicated that they could not remember such a decision being adopted.

The employer proposed that the matter be closed.

#### **Decision**

- 7. The employer shall, at the Staffing Committee Meeting, table a draft policy for the appointment of educator personnel to posts at Teachers' Centres.**

NAPTOSA expressed concern that workshops on HRM 4 of 2003 were not conducted despite a chamber decision to conduct such workshops.

Dr. Hlatshwayo indicated that:

- Workshops were conducted using the cascade model.
- No chamber decision was violated.
- Some districts did not invite labour to attend but the workshops were held.

SAOU indicated that:

- The employer was unable to honour the original dates set for the workshops, viz. 18<sup>th</sup> and 20<sup>th</sup> March 2003.
- They were not aware of the workshops being held.
- There was chaos in the implementation of HRM 4 of 2003.

NAPTOSA argued that the chaos in the implementation can be attributed to the employer's disregard for the chamber decision.

### **6.3 Grade-R Committee**

The employer indicated that the committee had not met and no report was available.

NAPTOSA indicated that there were issues that needed discussion .

The secretary explained that:

- The issue of Grade-R was left at the point where agreement could not be reached provincially until national agreements were reached.
- He had contacted the convenor and had requested a brief statement but unfortunately there were problems regarding the fax machine.

#### **6.4 Skills Development Committee**

The report was presented by Mandla Msweli.

Mover: Mandla Msweli  
Seconded: Employer (employer)

NAPTOSA questioned whether any programs were in place to address the issue of under and unqualified educators.

The convenor responded that the NPDE catered for under-qualified educators on REQV 11 & 12 but the recommendation was directed at the unqualified sector.

Adoption of Recommendation 1 : Mover: Mandla Msweli  
Seconded: SADTU

#### **Decision**

- 7. The Employer enters into negotiations with Higher Education Institutions to develop a programme that would address the problem of upgrading unqualified educators to reach REQV 13.**

NAPTOSA enquired whether:

- Information sessions were held with District Managers regarding level 5 learnerships?
- Forms reached the schools?
- There were checking mechanisms?
- Fixed criteria were used to select candidates?
- The closing date for applications could be extended since many DMs had not performed their tasks as expected.

Mr. Msweli responded that:

- Meetings were held with DMs to inform them of the activities.
- Forms were issued.
- Forms were issued to regions
- Over 700 applications were received.
- The project was managed by the ETDP SETA and that a project team comprising representatives from all parties, selected candidates.
- The request for an extension must be made to the ETDP SETA, which would be done by the convenor.

SADTU commended the committee on the progress made and raised the following issues:

- The progress in terms of addressing the un & underderqualified educator problem by 2004.
- Re-skilling, HIV/AIDS, Bursaries
- The workplace skills plan
- Quality Management System

The convenor indicated that:

- The statistics are not ready but they are on track to meet targets by 2004.
- The issue of bursaries, re-skilling, HIV etc. Must be discussed at the Training Committee meeting.
- The employer would support the Quality Management System.

NAPTOSA requested that the stats. be finalized as a matter of urgency since it impacts on staffing and the vacancy lists.

Mr. Msweli registered concern at the non-attendance of parties at committee meetings.

SADTU apologized for their absence from the last meeting and requested the meeting to address the issue of discontinuation of candidates from the NPDE programme.

### **6.5 Employment Equity**

The committee had not met and no report was available. A meeting would be held prior to the next chamber meeting.

### **6.6 Displaced Educator Committee**

The report was presented by Dr. Hlatshwayo.

Mover: Dr. Hlatshwayo

Secunder: Employer

Adoption of Recommendation 1: Mover: Dr. Hlatshwayo  
Secunder: Employer

**Decision**

8. The following management plan be adopted in order to absorb the displaced promotion post holders at schools.

<b>Item</b>	<b>Target Date (Completion)</b>
i) Employer facilitates return of displaced educators.	28 February 2003
ii) Employer negotiates cross transfers within district, Region and Province.	30 April 2003
iii) Finalization of Special Transfer List.	9 May 2003
iv) Compilation of Special Bulletin of Posts.	16 May 2003
v) Closing Date for Applications.	30 May 2003
vi) Assumption of Duty.	23 July 2003

- Regions would check that promotion posts occupied by displaced educators are not advertised in the Promotions Bulletin.
- Should such posts, as described above, be discovered, they would be withdrawn.

SADTU advised that an audit of the outstanding displaced promotion post holders be conducted after the conclusion of HRM 4 as many of the affected educators may have been absorbed.

Adoption of Recommendation 2:

Mover: Dr. Hlatshwayo  
Seconder: Employer

**Decision**

9. The employer issues the third draft of the revised procedure for addressing Displaced Educators, to parties for mandates.

The employer indicated that they would re-issue copies of the draft at the next committee meeting.



### **6.7 Dispute Prevention**

The report was presented by Dr. Hlatshwayo.

Mover: Dr. Hlatshwayo  
Seconder: Mr. Mdletshe

SADTU proposed that unresolved grievances be submitted to the Dispute Prevention Committee prior to a dispute being referred to Council.

The proposal was supported by the employer.

### **6.8 FET Report**

The employer indicated that no meeting was held and no report was available.

SADTU indicated that there were many changes taking pace within the FET sector and that there was a need for the committee to meet.

### **6.9 DAS**

The employer indicated that the committee would report at the next chamber meeting.

## **7. Restructuring of the Department of Education**

The employer proposed that the item be removed from the agenda and be discussed at the appropriate forum.

The proposal was seconded by SADTU.

NAPTOSA indicated that there must be certainty on which was the appropriate forum prior to the item being removed from the chamber agenda.

The employer indicated that:

- Parties were aware of developments in the DTT.
- They had communicated to all parties on the matter.
- Should the item remain on the agenda, they would not be in a position to make any contributions.

## **8. Date of the Next Meeting**

As per year plan.

## **9. Closure**

With no other matters to discuss, the meeting terminated at 15h10.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date Adopted



# Education Labour Relations Council KwaZulu Natal Chamber

elrc

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## Minutes

Meeting: Chamber Meeting  
Date: 08 May 2003  
Venue: ELRC Offices  
55 Church Rd.  
Red Hill

### 1. Welcome

The chairperson of the meeting, Mr. V.I. Ngidi, welcomed all delegates to the meeting and commenced proceedings with a prayer led by Mr. Masondo. He complimented the council on its acquisition of new offices and furniture.

### 2. Attendance

As per register

### 3. Apologies

Mr. Ramcheron	-	would be late
Mr. P. Gwamanda		
Mr. Mathonsi	-	would be late
Mrs. Dlamini	-	would be late
Mrs. Khumalo		
Mr. T.L. Hlela	-	would be late
Ms. R. Govender		
Mr. M. Msweli		
Mr. K.K. Nkosi		
Mr. J. Mota		
Mr. M. Ntombela		
Mr. M. V. Gumede		
Dr. E. V. Nzama		
Mr. Mchunu		
Ms. Richmond		

#### **4. Adoption of the Agenda**

SADTU proposed that the following 2 items be included as 7 & 8 of the agenda.

- a) ELRC Collective Agreements 1 & 3 of 2003
- b) Con-Arb. Awards and Agreements

Seconder:     NAPTOSA

The agenda was thereafter adopted.

Mover:         Mr. Mpungose

Seconder:     Mr. N.G. Ngcobo

#### **5. Adoption of the Minutes of the Previous Meetings**

After minor editorial corrections on pages 5, 8 and 11 the minute of the meeting of 20 March 2003 was adopted.

Mover:         The Secretary

Seconder:     The Employer (Mr. Ngcobo)

The chairperson thanked the secretary for the presentation of the minutes.

#### **6. Matters Arising**

##### **6.1 Stanco Report**

The Stanco Report was presented by the secretary and adopted by the meeting.

Mover:         The Secretary

Seconder:     Mr. Ngcobo

NAPTOSA initially suggested that the Meeting Procedures Document be referred back to the committee for further inputs but subsequently withdrew the suggestion after it was revealed that Stanco had discussed the document twice and that principals of parties had also given their mandates for the signing of the agreement.

The employer suggested that the agreement be reviewed after 12 months since deficiencies, if any, would only become evident after application of the procedure.

All parties were in agreement and the Agreement titled 'Resolution 1 of 2003 – Procedures for the Conduct of Meetings of the KZN Chamber of the ELRC' was adopted unanimously by the meeting.

#### **Decision**

- 1. The document titled 'Procedures for the Conduct of Meetings of the KZN Chamber of the ELRC' be adopted as ELRC (KZN) Resolution 1 of 2003.**

NAPTOSA, with reference to point 2 of the report, questioned the status of the post of chairperson and vice-chairperson. They proposed that the vice chairperson be elected to the position of Chairperson.

The secretary advised that, should chamber adopt a decision to elect a new chairperson, the procedure in terms of the constitution must be followed and that the secretary would need to call for nominations, etc.

After a brief discussion it was agreed that the current vice-chairperson would act as chairperson for the remainder of the term.

#### **Decision**

- 2. The resignation of the chairperson of chamber, Mr. L. Lotz, be accepted and the vice-chairperson, Mr. V. I. Ngidi continue to act as chairperson of chamber.**

### **6.2 Staffing Matters**

Section 5 of the report on Promotions was presented by Dr, Hlatshwayo and sections 1 to 4 of the same report on PPN and related matters was presented by Mrs. Dlamini.

The report was subsequently adopted.

Mover: Mrs. Dlamini  
Seconder: Mrs. Dirker (SAOU)

Further to SADTU requesting information on the contents of HRM circular 18 of 2003, the employer indicated that the said circular advertised promotion posts for therapists, etc.

Labour requested information on the release of the appointments and the date for assumption of duty.

The employer advised that placement would occur on 26 May 2003 and 01 June 2003 is the targeted date for assumption of duty.

NAPTOSA advised that:

- Movement of serving educators at that time could cause problems owing to examinations and assessments
- Schools may request that such educators move to their new schools at a later date.
- Schools may request that UTEs remain at their institutions for the remainder of the term for curriculum delivery purposes.

Mr. Ngcobo indicated that:

- Special arrangements could be made where necessary.
- Double parking would be problematic.
- Suggestions from labour were welcomed.

SADTU believed that:

- The effective date must be the earliest possible date.
- The cases where the temporary educators were not appointed to the posts would be few.
- Educators cannot continue to be prejudiced by not obtaining their benefits.

The problem of the governing bodies failing to submit recommendations timeously was discussed and the following decision was moved by NAPTOSA and adopted unanimously.

**Decision**

- 3. The Staffing Committee must develop procedure that would address the problem of governing bodies failing to adhere to the timeframes and thereby causing delays in the appointment of educators.**

Recommendation 1 of the report was thereafter moved by Mrs. Dlamini and seconded by SADTU.

Mr. Ngcobo questioned whether the 2 parts to the recommendation were part of the same recommendation, as they seemed to be contradictory and that only part 1 could be supported. Part 2, he indicated would have the effect of suspending circular HRM 63 of 2002.

Labour was unanimous in that:

- The 2 parts to the recommendation were not contradictory.
- Only the halting of single transfers was requested.
- The employer tabled Circular HRM 63 for discussion.
- The employer expressed the view that “domestic reasons” were of concern.
- It would not make sense for the employer to agree that problems exist but not want to resolve them.
- Such transfers would undermine Res. 5 of 1998, where all vacancies must be advertised.

The employer indicated that:

- They did not believe that Res. 5 was violated in any way.
- Single transfers would not lessen the number of vacancies.
- The vacancies would still exist but at different locations.
- Discussions on the subject could continue.

Labour was of the view that:

- Clear criteria needed to be developed for assessing ‘domestic reasons’.
- Labour did accommodate the concerns of the employer hence the support for continuation of mutual transfers.

- All educators need to have a fair opportunity to apply for vacant posts and single transfers effectively blocks certain vacancies.
- Reasons supplied by educators as urgent domestic issues were often fabricated.

After some discussion on the matter it was finally agreed that:

- The staffing committee be mandated to develop criteria for single transfers and procedures for monitoring the implementation of such criteria.
- Single transfers be halted in the interim.

### **Decision**

#### **4. Policy on Transfers**

- **The current practice of mutual transfers continue.**
- **The staffing committee must develop:**
  - **criteria for the transfer of educators (excluding mutual transfers) from one school to another.**
  - **A procedure for monitoring the implementation of such criteria in effecting transfers.**
- **Single transfers be halted in the interim.**

The decision was moved by SADTU and seconded unanimously.

Recommendation 2 of the report was thereafter moved by Mrs. Dlamini and seconded by Ms. Fisher.

SADTU requested clarity on exactly what was going to be researched.

Mrs. Dlamini responded that the research would entail:

- The total number of Level 1 educators that were seconded.
- The number of educators per post level.
- The number per notch.
- The total cost.

NAPTOSA indicated that the investigation must also include:

- The entire policy and legality of filling posts in the manner envisaged.
- Acting personnel in Level 4 & 5 posts.

SADTU indicated that:

- Officials of the employer were spreading rumours that SADTU was opposed to the upgrading of ex-college educators.
- They noted the dirty tricks used to discredit SADTU.
- The employer must investigate the conduct of their officials.
- SADTU would conduct their own investigation.

The employer indicated that:

- There was no need to conflict on the matter of upgrading.
- The employer would engage in a joint venture with labour.
- The research envisaged also includes finding alternative solutions.
- Labour must make suggestions.
- They were not in a position to comment on the alleged distortion of information.
- Official communication to regions is submitted after each chamber meeting.

Recommendation 2 of the report was moved by Mrs. Dlamini, seconded by NAPTOSA and unanimously accepted.

#### **Decision**

- 5. The employer shall conduct more research on the upgrading of ex-college educators and report back to the Staffing Committee.**

With reference to unpaid temporary educators, Labour believed that:

- Clear guidelines must be given for the forwarding of such information to the relevant office.
- Regions usually receive the information but they do not respond.

The Employer indicated that they would provide labour with the names of officials in each region that could be contacted to address such matters.

#### **SADTU**

- commended the employer for resolving the issue of unpaid educators in the North Durban region.
- Were unhappy that educators had received half pay for January, which was unfair.
- Indicated that some educators were not paid although they had worked.
- Educators did not employ themselves and therefore, even though their appointments were not approved by the CEO, they ought to be paid.

Recommendation 3 was moved by Mrs Dlamini and adopted unanimously.

#### **Decision 6**

##### **Unpaid Temporary Educators**

- **Labour must submit specific cases of unpaid educators to the employer for investigation (details of contact person in each region shall be provided to labour).**
- **The employer must respond within set time frames.**
- **Only if problems persist should it be raised at chamber.**

### **Promotion Related Matters**

NAPTOSA requested details of the posts at Teachers Centres.

The employer informed Labour that the EMIS section was overloaded but that information would be made available at the next meeting.

NAPTOSA registered their disappointment at the employer response since:

- A decision to provide information was adopted at the previous meeting.
- Two committee meetings were held since the previous chamber meeting.
- Information was requested at the previous committee meeting.
- The employer had not responded positively.

After a brief discussion, it was agreed that the information would be supplied at the next committee meeting.

### **Decision**

- 7. The information on educator posts at all Teachers Centres in KZN be presented to the Staffing Committee at the next committee meeting**

In response to Labour's query about the effective date of appointment regarding posts advertised in HRM Circular 04 of 2003, the employer indicated that:

- A number of problems were experienced.
- Submissions would be made to the CEO.
- The contracts of temporary educators held against such posts were extended to the end of May.
- The date for the assumption of duty would be 01 June 2003.

The employer complained that the language and tone of section 5.2 of the report was inflammatory and urged that committees desist from using such language.

Labour questioned the employer on its reasons for such delays in appointment dates since placements would be effected on 09 May 2003. They suggested that:

- The employer acts consistently in terms of appointment practices.
- The date of appointment should be 09 May 2003 or 12 May 2003.
- Since the only date agreed upon at chamber was 07 April 2003, the employer was obliged to appoint as close as possible to the agreed date.
- No agreement existed regarding 01 June 2003.
- Labour cannot be blamed or prejudiced by the fact that the contracts of temporary educators were extended.
- Members waited anxiously since 07 April 2003 and the appointments should not be delayed further.
- The proposal of the employer i.e. 01 June 2003 be rejected.



The employer responded that:

- The proposal by labour of 09 May 2003 was unacceptable.
- Placement on 9<sup>th</sup> May does not mean that the CEO would sign appointments on 9<sup>th</sup> May.
- After the CEO has signed, letters of appointment would have to be prepared by regions.
- Educators would have to be given seven days to wind up their work and thereafter move to new schools.
- They were not unsympathetic to the loss suffered by the educators.

Labour countered that:

- They was no policy regarding a seven day winding up.
- The CEO was a public servant and must be available to perform his duties.
- The employer has not in the last three years, ever abided by the time frames.
- Labour was always forced to compromise.
- The issue of contracts of temporary educators was not raised at the committee.
- The purpose of chamber is undermined when agreements are reached and compromises made within chamber and the employer thereafter exercises its prerogative outside of chamber.

The employer requested a short caucus, which was granted by the chairperson.

After the caucus, the employer reported that:

- They had considered the proposal of labour
- The committee needs to meet by Wednesday, 14<sup>th</sup> May 2003 to assess the impact of the extended contracts of temporary educators.
- Double parking would be difficult to explain to treasury.
- The principals may be persuaded if only a few posts would warrant additional costs.

NAPTOSA indicated that:

- Each school had vacant posts filled by way of acting personnel.
- Acting personnel were being paid.
- The terms 'many' or 'few' are subjective.
- The proposal of the employer cannot be supported.

Mr. Ngcobo explained that:

- Although vacant promotion posts were filled with acting personnel from the same institution, UTEs were employed in the resultant vacancies.
- The acting persons and UTEs were paid, resulting in a financial position that was worse than originally revealed.
- The additional monthly expenditure would have to be explained to treasury.

SADTU indicated that:

- Labour had compromised the increase in salary of those who ought to have been promoted from April.
- Our 2000 post level 1 vacancies were not timeously filled.
- The employer has accrued substantial savings owing to the above.
- The employer does not have the capacity to provide all the required information by Wednesday, 14 May 2003.
- It must be clearly indicated whether the employer was willing to shift their position.
- It seemed that the employer was simply using delaying tactics.

The chair declared that the issue was deadlocked.

In response to section 5.4 of the report, Labour questioned the fate of all unfilled posts advertised in circular HRM 52 of 2002 and advised the employer that HRM circular 10 of 2003 could not be regarded as a satisfactory response.

The employer indicated that the unfilled posts referred to did not exist in the new structure.

Labour contended that many of the posts advertised in circular HRM 34 and 40 of 2003 would actually be posts that were already advertised in HRM 52 of 2002.

Mr. Ngcobo assured labour that all posts advertised in circulars HRM 34 and 40 were new posts.

In response to labour's query of whether the unfilled posts from HRM circular 52 were abolished, the employer indicated that such post did not exist in the new structure whilst new posts have been created.

SAOU expressed bewilderment at the disappearance of 64 posts and the emergence of 250 new posts.

NAPTOSA proposed that the issue be referred back to the committee for the employer to make a full disclosure.

**Decision**

- 8. The issue of unfilled posts advertised in circular HRM 52 of 2002 be referred to the Staffing Committee.**

SADTU expressed concern at:

- Posts being advertised prior to it being discussed at committee.

- The filling of posts whilst restructuring in the Public Sector was still continuing, since some posts could be filled by displaced personnel from other departments.
- The employer proceeding with its restructuring programme whilst the process is disputed.

Mr Ngcobo informed the meeting that:

- The decision of the DTT was that posts at salary level 10 and above were regarded as critical and should be filled.
- The IDTT must be informed of all such posts.
- Public service posts e.g. deputy director posts are also being advertised.

After a brief discussion, the following points emerged:

- A brief report on posts to be advertised was presented to the committee.
- Statistics were not presented in terms of regional breakdown.
- Two separate bulletins viz. 1 for level 4 posts and one for level 5 posts would be released.
- The two separate bulletins would assist the employer in its administration.
- The closing date for applications would be four weeks from the date of the public advertisements.
- Schools would receive the bulletins three weeks prior to the closing date.

NAPTOSA requested that decision 4 of the previous chamber meeting, viz. that all outstanding posts be advertised, be upheld.

Mr Ngcobo assured labour that the employer would adhere to the decision and a progress report would be presented at the meeting of 06 June 2003.

#### **Decision**

- 9. With reference to the Decision 4 of the minutes of 20 March 2003, on the advertising of all outstanding promotion posts at the conclusion of the current process (Circular HRM 4 of 2003), the employer shall adhere to the decision and a report shall be presented on 06 June 2003 ie. next chamber meeting.**

### **6.3 Grade-R Issues**

The secretary reported that there was no progress regarding the issue of Grade-R and that there was no need for a meeting unless the national audit results become available.

### **6.4 Skills Development**

The secretary reported that the Skills Development Committee was unable to meet. A date was scheduled for a meeting but unfortunately the convenor of the

committee, due to an emergency could not attend. There was no other available date prior to chamber.

## **6.5 Employment Equity**

A report was presented by Dr. Hlatshwayo on behalf of the convenor.

NAPTOSA advised that the report appeared to be a Department of Education report and not a committee report. They proposed that the report be amended accordingly. The proposal was unanimously accepted.

Mover : Dr. Hlatshwayo  
Seconder : Mr Mpungose (NAPTOSA)

The secretary informed chamber that he had convened an Employment Equity Committee meeting as per chamber decision but that the parties, at the meeting, adopted a recommendation that there was no need for a separate Employment Equity structure under the auspices of the chamber. It was felt that the Consultative Forum was best placed to address all issues adequately and that a separate committee would result in duplication.

All parties agreed that there was need for a separate structure under the auspices of chamber to address the Employment Equity issues pertaining to educators. e.g. workforce profiles, affirmative action plan, equity targets, etc.

### **Decision**

**10. The Employment Equity Committee of Chamber must be established, as previously decided, in order to report to chamber on:**

- **Impact of Employment Equity plans, policies, etc on educators.**
- **The employment profile of educators employed by the DEC (KZN)**
- **The numerical targets for educators employed in terms of the Employment of Educators Act, 76 of 1998.**
- **The Affirmative Action Policy for educators noting the challenges in terms of the South African Schools Act, 84 of 1996.**
- **Other issues relevant to Employment Equity within the Educator Sector.**

## **6.6 Displaced Educator Matters**

The report was presented by the convenor, Mr. N Ngcobo.

Mover : Mr. N Ngcobo  
Seconder : Mr. K K Nkosi

NAPTOSA indicated that there were displaced educators who were not included on the list and that some confusion existed on the definition of a displaced educator.

Mr. Ngcobo advised that:

- He would not be able to comment on specific cases.
- It was possible to have displaced educators who were not on the list as they may be new cases.
- Displaced educators were defined in terms of HRM circular 12 of 1997.

NAPTOSA complained that regions did not act uniformly in that some regions had unions participating in the process whilst other regions had unions absent.

Mr. Ngcobo responded that the resolution needed to be studied in order to determine whether the involvement of labour was required.

## **6.7 Dispute Prevention**

The report was presented by Mr. Ngcobo.

Mover : Mr. N Ngcobo  
Seconder : Mr. N Gcwabaza

After a brief discussion on the recommendation that unresolved grievances be referred to the Dispute Prevention Committee, chamber agreed that the recommendation be referred back to the committee to be refined.

### **Decision**

- 11. The recommendation that unresolved grievances at a regional level be submitted to the Dispute Prevention Committee for possible intervention, be referred back to the committee for further refinement.**

## **6.8 Furthered Education Training**

The report was presented by Mr. F Ingram.

Mover : Mr. F Ingram  
Seconder : Mr. Pillay (Secretary)

Labour indicated that:

- Educator guides were not distributed to schools as indicated in 3.1.1 of the report.
- They were surprisingly not aware of the training provided to educators especially since 96% were already trained, as alleged in the report.
- Unions must be informed of training dates and venues.
- Labour must be advised of what information was to be audited in terms of 3.1.3 of the report.

Mr. Ingram informed chamber that Mrs. Dlamini, who was responsible for FET within schools was not present but the information would be presented at the next committee meeting.

SADTU indicated that:

- When the FET curriculum for schools became operative, educators may not fit into the new structure.
- Chamber must consider the introduction of a retraining programme to accommodate all educators.
- Funding of the project could be accessed via the Skills Development Fund.
- A comprehensive audit must be conducted to determine the skill levels amongst educators.
- The FET Committee must present the necessary recommendations to chamber.

The proposal by SADTU was supported unanimously.

**Decision**

- 12. The FET Committee must develop a full proposal for the retraining of educators so that they would be accommodated within the new FET Curriculum and structure, upon implementation in 2006. An audit must be conducted to determine the skills levels and the training needs, as a first step.**

Mr. Ingram cautioned that:

- The proposed task was extremely massive.
- It went beyond technical education.
- The issue of retraining in preparation for the new curriculum was an issue for cabinet as well.

The recommendation of a Special Day to celebrate the year of FET was adopted unanimously.

Mover : Mr. F Ingram  
Seconder : Ms. Fisher (NAPTOSA)

**Decision**

- 13. In celebration of the Year of FET chamber shall allocate a special day for all members and parties to chamber to meet for a seminar, in order to obtain a better understanding of FET in both schools and colleges.**

## 6.9 Development Appraisal System

The report was presented by Mrs. Dlamini, who apologized for the format.

Mover : Ms. Dlamini  
Seconder : Mr. Masondo

The employer explained that:

- The convenor of the Committee was relatively new.
- The secretary of chamber was at another meeting.
- The secretary would provide greater guidance in future.

Chamber was unanimous in that DAS must be promoted in all regions.

SADTU proposed that the committee consider the establishment of DAS posts in terms of the new structure of the Department of Education.

The decision was unanimously supported.

### **Decision**

- 14. The DAS Committee of Chamber must develop a proposal for the allocation of posts within the new structure of the department in order to implement DAS**

## 7. ELRC Resolutions 1 and 3 of 2003

Mr. Gcwabaza raised the following issues concerning the above resolutions:

- The resolutions concerned the performance evaluation of educators.
- A manual on the implementation and interpretation was being prepared by Council.
- The integration of DAS and WSE would be addressed.
- The process of implementation must not cause tensions.
- Implementation could only occur after the manual was released.
- Advocacy and training must precede implementation.
- Certain structures of the department were considering implementation and unions were being invited.

Mr. Ngcobo indicated that:

- The employer was aware of the manuals.
- Workshops on the resolutions were being planned.
- The workshops would involve officials from the National Department of Education.

SADTU complained that some supervisors were proceeding with WSE in the absence of a proper procedure resulting in tensions.

Mr. Ngcobo requested the relevant details concerning such occurrences and promised to address the issue.

Labour informed the employer that problems emerged within the Vryheid Region and the directorate responsible was the Quality Assurance Directorate.

**8. Con-Arbitration Awards**

SADTU raised the issue of the failure of the employer to implement settlement agreements and arbitration awards.

NAPTOSA added that it was essential for a timeframe to be established for the implementation of all awards.

After some discussion it was agreed that all outstanding settlement agreements and arbitration awards be implemented within 14 days.

**Decision**

**15. All outstanding Conciliation (Settlement) Agreements and Arbitration Awards shall be implemented by the employer within 14 days.**

**9. Date of Next Meeting**

06 June 2003

**10. Signing of Resolutions**

The Agreement on 'Procedures for the Conduct of Meetings of the KZN Chamber of ELRC' was signed by parties.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date Adopted





# Education Labour Relations Council KwaZulu Natal Chamber

elrc

P.O. Box 40045  
Red Hill, 4071

Tel (031) 5731777  
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## Minutes

Meeting: Chamber Meeting  
Date: 05 June 2003  
Venue: ELRC Offices  
55 Church Rd.  
Red Hill

### 1. Welcome

The chairperson of the meeting, Mr. V.I. Ngidi, welcomed all delegates to the meeting and commenced proceedings with a prayer led by himself. He expressed disappointment at the delay in the commencement of the meeting.

### 2. Attendance

As per register

### 3. Apologies

Mrs. Dirker

Mr. Mthabela

Mr. Mdletshe

Mr. M.V. Gumede

Mr. K.K. Nkosi

would leave early

would leave early

would be late

### 4. Adoption of the Agenda

The employer indicated that they had issued prior notice to the secretary and proposed that the agenda include the item on 'Ratification of HR Policies' as no. 7 of the agenda. The addition was unanimously accepted.

The agenda was thereafter adopted.

Mover:

Mr. Masondo

Seconded:

Mr. N.G. Ngcobo

## 5. Adoption of the Minutes of the Previous Meetings

Corrections: p.13 - DTT corrected to read IDTT  
p. 16 - Furthered changed to Further.

Mover: The Secretary  
Seconder: SADTU (Ms Pardesi)

## 6. Matters Arising

### 6.1 Stanco Report

The Stanco Report was presented by the secretary and adopted by the meeting.

Mover: The Secretary  
Seconder: Mr. Ngcobo

Recommendation 1 was adopted unanimously.

Mover: SADTU  
Seconder: NAPTOSA

### Decision

All MTEF Consultation Workshops held between the Department of Education and Labour be convened under the auspices of the KZN Chamber of the ELRC.

The secretary moved for the adoption of Recommendation 2, which was seconded by SADTU.

SADTU enquired whether timeframes for the workshop could be fixed and the employer indicated that, owing to national facilitators being engaged for the workshop, dates would depend on their availability.

The recommendation was adopted as presented.

### Decision

2. The employer hosts workshops on leave in each of the 4 regions and all unions be allowed to send their delegates to each of the workshops.

Recommendation 3 was moved by the secretary and seconded by the employer. It was agreed that the measure was an interim one.

### Decision

3. The Staffing Committee present 2 separate reports to chamber, viz. PPN and Related Issues and Promotion Issues, and that each report be adopted and discussed separately at chamber.

## **6.2 Staffing Matters**

### **6.2.1 PPN and Related Matters**

The report was presented by Mrs Dlamini.

Mover: Mrs. Dlamini

Seconder: Mr. Mpungose

Recommendation 1 of the report was moved by the convenor Mr. Dlamini and seconded by SADTU.

Mr. Ngcobo indicated that the recommendation:

- was well-meaning.
- was linked to the second recommendation
- needed to be referred back to the committee for refinement.

He added that:

- The employer intended filling posts as such vacancies arise.
- The recommendation may therefore be premature.
- The employer would prefer to hold the recommendation in abeyance.

Labour welcomed the new move of the employer and indicated that:

- The recommendation could be adopted and when new measures were in place, such decisions be rescinded.
- The recommendation cannot be held in abeyance based on the promise of the employer.
- The employer had not provided an alternative proposal.
- There was no major difference between the employer and labour.

After some discussion on the matter the chairperson advised that it seemed unlikely that agreement would be reached and the meeting should proceed to the next item on the report.

Recommendation 3 was moved by Mrs. Dlamini and seconded by NAPTOSA.

Mr. Ngcobo indicated that:

- The term 'full disclosure' needed to be clarified.
- The reasons for withdrawn posts could be many and varied, including
  - human error
  - typographical mistakes
  - negligence
  - etc.
- Current procedures in terms of regulations were sufficient to address charges of negligence.
- 3.2 of the recommendation was therefore superfluous

Labour contended that:

- The process of validation ought to have been thorough causing withdrawn posts to be minimized.
- Errant officials had not been addressed in the past
- The full disclosure would reveal whether there had been negligence.
- The appropriate action must be taken against negligent officials.
- Applicants incur great expense in order to apply for posts.
- The intention of labour was not to see officials charged but merely to minimize withdrawal of posts.
- A large amount of errors and withdrawn posts does not promote public trust in the education system.

Mr. Ngcobo re-iterated that:

- The employer had the same aims and wanted to minimize errors.
- Supports the principle that everyone must be held accountable.
- Leaving the recommendation in its current form would not be problematic to the employer.
- They would accept the recommendation as a decision of chamber.

#### **Decision**

4. HRM Circulars 9 and 18 of 2003
  - a. The employer shall provide a full disclosure on the 440 withdrawn posts.
  - b. The responsible officials would be held accountable for withdrawn posts.

SADTU indicated that recommendation 2 of the report had not been discussed and therefore needed to be formally moved and seconded.

Mrs. Dlamini moved for the adoption of Recommendation 2 of the report and SADTU seconded the recommendation.

Mr. Ngcobo indicated that:

- The input of the employer had already been made regarding recommendation 2.
- Quarterly advertisements could not be supported whilst the employer was considering advertising whenever posts became available.

NAPTOSA advised that the main thrust of the recommendation was its second part, viz. the establishment of a monitoring committee and not the quarterly adverts.

Labour indicated that a decision on quarterly advertisements already existed and therefore it should remain until chamber adopts another decision in its place.

After some discussion on the matter, the secretary advised that the first part of the recommendation be deleted if such a decision already existed and that the meeting focuses only on the second part of the recommendation, viz. single transfers.

NAPTOSA proposed the deletion of the first part of the recommendation.

Mr. Ngcobo seconded the proposal and enquired what the function of the Committee would be.

Labour advised that the terms of reference were outlined in the previous minutes.

NAPTOSA added that:

- Schools do not know that single transfers have been placed on hold.
- The idea of a committee must be accepted in principle.
- Criteria could be established at a later stage.

The employer proposed that the matter be referred back to the staffing committee for a full proposal including criteria and mechanisms for implementation.

The proposal was seconded by SADTU.

#### **Decision**

5. The Staffing Committee is mandated to develop criteria and a monitoring mechanism for the implementation of single transfers.

#### **6.1.2.1 Promotions**

The report was presented by Dr. Hlatshwayo. NAPTOSA added that section 1.5.2 ought to have included the fact that the bulletin would be released one week prior to the closing of schools for the second quarter.

The amendment to the report was effected and the report was seconded by NAPTOSA.

SADTU advised that under section 1.2 of the report:

- No consensus was reached in the committee
- Labour wanted all posts to be released

- HRM circular 10 was released after the process was completed.

In response to the employer's enquiry into what was meant by a full disclosure, SADTU indicated that it entailed:

- The details of the posts that were filled.
- A list of all unfilled posts together with reasons why each was not filled.

NAPTOSA enquired whether the unfilled posts were abolished and the employer responded that those posts did not exist in the new structure of the department.

NAPTOSA indicated that PSCBC Resolution 7 of 2002 did not allow for the abolition of posts.

Mr. Ngcobo indicated that Resolution 7 was a restructuring instrument and in any restructuring some posts that existed in the past would not exist after restructuring. He gave the example that 8 regional chief directors posts existed in the past but only 4 posts currently exist.

SADTU indicated that:

- Some posts in circuits and districts were released but other similar posts were not released.
- Such selective release of posts were unacceptable.
- In terms of the Promotion of Administrative Justice Act, 2000, a fair opportunity ought to have been given for the decision of the employer to be challenged.
- The council has a responsibility to minimize disputes.
- It was unacceptable for the employer to indicate that those who were not satisfied should lodge disputes.
- Issues must be resolved prior to embarking on the dispute route.
- Unions would need the relevant information even before disputes are declared.
- Applicants would have spent significant sums of money in making such applications.

Mr. Ngcobo indicated that the employer has no objection to disclosing information.

Labour proposed that the mechanics for filling the balance of posts from HRM circular 52 be referred to the Staffing Committee.

Mr. Ngcobo indicated that:

- The employer would not enter an agreement when performance is not possible.
- Employing and remunerating is the responsibility of the employer.
- They would not agree now and be accused of negotiating in bad faith later.

After a brief discussion on section 1.5.2 of the report parties agreed that it should have been phrased as a resolution.

**Decision**

6. The Employer shall disclose all information related to posts advertised in HRM circular 52 of 2002 and applicants would be advised where advertised posts did not exist within the new structure of the department.

NAPTOSA questioned whether promotion posts were advertised according to the Post Level Ration norms in PAM.

Mr. Ngcobo indicated that such questions were not expected but the necessary information would be obtained and presented at the next Staffing Committee Meeting.

SADTU informed the employer that besides disputed posts many appointment letters were not released to educators and such educators had not assumed duty at their new posts. An appeal was made to the employer to release all such appointment letters.

Labour indicated that:

- Many promotion posts were filled with Acting personnel.
- Such appointments do not conform to Resolutions of Council on Acting Appointments.
- They were aware that a procedure was to be presented at the next chamber meeting.
- Labour must be invited as observers in the interim.

SADTU indicated that:

- Many schools had not received HRM circulars 34 and 40 of 2003.
- It was rumoured that many posts on the circular were wrongly advertised.
- Certain requirements for the posts e.g. experience in WSE discriminate unfairly against educators who were not absorbed into such posts.
- Such criteria would disqualify most applicants.

- All schools must receive the circulars well before the closing date.

In response, the Employer indicated that:

- HRM circular 30 was issued to all schools.
- Labour should provide details of schools that did not receive the circular and the matter would be investigated.
- HRM circular 40 did not reach all schools but distribution is continuing.
- The advertisement shall be reviewed to investigate the allegation that it is discriminating.
- The concerns of noted.
- The employer is of the view and has information that all incumbents had assumed duty.

SADTU indicated that some of their members had complained that letters were not issued but it was possible that such posts were disputed and the incumbents were unaware.

SADTU questioned whether there was any truth in the rumour that posts were incorrectly advertised.

Dr Hlatshwayo indicated that:

- There was no truth in the rumour that posts were to be re-advertised.
- Posts advertised in the media were in post levels.
- Post level 5 posts were advertised separately from post level 4.
- There were some mistakes.
- Discrepancies detected showed that the salary scale did not match the post level in DCES posts.
- Applicants would be informed.
- There were no mistakes in the CES posts.
- The initial closing date was 30 May 2003 but was extended to 13 June 2003.
- In order to accommodate the corrections, the date was extended to 30 June 2003 for posts advertised in HRM 40.

Labour proposed that the correction of the adverts, and the closing dates and related matters be referred to the committee in order to accommodate those educators who did not apply owing to the discriminatory nature of the advertisements.

It was finally agreed by all parties that the matter be referred to the Staffing Committee.



Labour indicated that:

- It was the third time in succession that circulars were released with errors.
- Circulars must be checked by the committee prior to release.
- It was a waste of money to release circulars with errors and thereafter issue other circulars to correct the first.
- Circulars released by the employer are riddled with errors.

#### **Decision**

7. All vacant management posts in schools would be advertised one week prior to the end of the second school quarter for 2003.
8. The advertisement of posts in HRM circulars 34 and 40 of 2003 shall be referred to the staffing committee to reconsider:
  - the nature of the adverts (whether unfairly discriminatory),
  - timeframes and
  - related issues.

### **6.3 Grade R**

There was no report presented to Chamber.

SADTU indicated that:

- It was unacceptable that no report was presented in the past 10 months.
- The issue of the 900 Grade R posts must be resolved.
- The secretary must schedule a date for the committee to meet.
- There has been tremendous developments within ECD.
- Issues of conditional grants must be addressed.

The secretary informed chamber that:

- He had contacted the convenor and was informed that there were no new issues to discuss related to Grade R.
- The survey results was still awaited and the convenor agreed to advise the secretary when such results become available.
- Parties must supply the secretary with issues that must be placed on the agenda.

SADTU accepted that they would supply the secretary with items that must be placed on the agenda but indicated that such inputs should not be a precondition for a meeting.

**Decision**

9. Parties shall forward items for inclusion in the agenda of the Grade-R committee meeting and the secretary shall convene a meeting of the said committee.

**6.5 Employment Equity**

The report was presented by Mr S. Zuma.

Mover : Mr. S. Zuma

Seconder : Mr. Masondo

SADTU questioned whether the committee had met. The secretary indicated that the Employment Equity Committee had not met since the last chamber meeting.

Labour expressed concern that the committee did not meet since the last chamber meeting and requested that a meeting of the committee be held urgently.

**Decision**

10. The Employment Equity Committee of Chamber must meet urgently to attend to matters referred to it by the previous chamber meeting.

**6.6 Displaced Educator Committee**

No Report was presented.

**6.7 Dispute Prevention Committee**

No Report was presented.

Labour expressed concern that the parties had failed to meet and insisted that meetings be held and reports be presented at the next chamber meeting.

Mr. Ngcobo explained that whilst it was unacceptable that committees fail to meet, sometimes circumstances are beyond the control of chamber.

SADTU indicated that:

- The employer failed to implement awards.
- The chamber decision was once again ignored.
- A crisis was looming.

NAPTOSA added that both awards and settlement agreements must be implemented.

Mr. Ngcobo indicated that:

- The employer has contacted the regions and requested that awards be implemented.
- A follow-up will be made.
- Union could address all queries to Mr. S. Naidu on fax no. 035-874 3519.

SADTU advised that some of the awards were more than 5 months old and questioned whether interest would be paid.

**Decision**

11. All outstanding settlement agreements and arbitration awards must be submitted to Mr. Sivi Naidoo @ (035) 8743519 (fax) and such agreements/awards shall be implemented within 14 days.

**6.8 FET**

The Report was presented by Mrs. T. Dlamini.

Mover : Mrs. Dlamini

Seconder: SADTU

SADTU complimented the convenor for the presentation of the report.

SADTU indicated that:

- There were rumours of retrenchment owing to the fall in enrolment.
- Campus managers seem to be appointed without proper procedures.

Dr. Nzama responded that:

- The employer was not aware of any plans to retrench.
- Only rectors of colleges have been appointed and a work study was being conducted to investigate the staffing needs of all colleges.
- The level at which campus managers will be appointed will depend on enrolment.

SADTU indicated that they had received information that a campus manager was appointed at Sivanandar Technical College.

Dr. Nzama advised that:

- Two Campus Heads have been displaced (Sivananda and Ntuzuma).
- Persons are currently acting.
- Principals and sectional heads are currently on P.L. 4.

- Two separate institutions were operating from the same campus.

NAPTOSA quoted the decision of the previous meeting that information on training was to be presented to chamber.

Mrs. Dlamini indicated that:

- Statistics from the newly created regions had not been submitted.
- Statistics are being collected.
- The export and import of schools resulting from the new demarcation complicated matters.
- Information will be supplied when it became available.

NAPTOSA questioned whether all schools received the requisite training.

Mrs. Dlamini responded that some schools did not receive training but the mopping-up would occur in the course of June.

SADTU, with reference to 3.1.3 of the report, enquired whether practicing educators would be included in such delegations.

Dr. Nzama indicated that whilst educators could not be included in the delegation, a further study would be undertaken in September and the proposal by labour would be taken as a challenge.

NAPTOSA indicated that some educators did get overseas exposure via the Tirisano fellowship.

SADTU requested clarity on:

- The issuing of the new curriculum statement.
- DANDIDA
- Whether the FET needs were considered in the MTEF budget.

Dr Nzama indicated that:

- The curriculum statement for schools was already issued but the statement for colleges was awaited.
- DANDIDA was a Danish funding project for FET.
- Funding in terms of the current MTEF budget will not adequately address the need of the FET sector.
- More funds were needed especially for disadvantaged colleges.
- Spending could not exceed R201 million.
- National norms for funding needed to be established.

- Equipment at colleges needed upgrading.

With reference to page 4 of the report, SADTU indicated that:

- A repeat of the OBE experience with the cascade model must be avoided.
- The 80 hours allocated for training must be used.
- Training must be certified.
- The employer has taken too long to identify content gaps and provide training.
- Two generations of learners would suffer.
- Results of the audit in terms of 3.2.9 of the report must be present to chamber as part of the report.

Mrs. Dlamini responded that:

- Transition training core teams would go directly to educators and principals.
- Such training was not certified.
- Content training would be conducted by Higher Education Institutions and would be certified.

NAPTOSA requested information on:

- The time frames for establishment of subject committees.
- The venue for the provincial history conference.

Mrs. Dlamini responded that:

- The time frame was the third quarter in 2003.
- The conference would take place in Durban.

The recommendation to chamber, as presented in the report, was moved by SADTU and seconded by NAPTOSA.

#### **Decision**

12. A one-day workshop shall be held on Wednesday, 18 June 2003 at the Durban Teachers' Centre. The programme for the workshop shall include:

- Qualification and Assessment
- Implementation and Progress in FET
- Landscaping of schools

Retraining of Educators for the new FET Curriculum

NAPTOSA advised chamber that the venue of the workshop was the Durban Technical College.

## 6.9 Development Appraisal System (DAS)

The report was presented by Mrs. Z. Zulu.

Mover: Mrs. Z Zulu

Seconder: SADTU

Recommendation 1 was moved by Mrs. Zulu and seconded by SADTU with the addition that reporting be extended to districts and circuits.

There were no objections and the recommendation was adopted.

Recommendation 2 was moved by Mrs. Zulu and seconded by SADTU.

Mr. Ngcobo indicated that:

- There may be a problem at an implementation level.
- There was a specific manner in which posts were created.
- There was no information on the basis for requesting 2 posts per district and one per region.
- It seems to be arbitrary.

SADTU indicated that:

- DAS was not being implemented in the province.
- The main reason was that there was nobody to monitor implementation.
- The agreement was reached in 1998 and implementation is still problematic in 2003.
- The education system was not performing well.
- Personnel was required to monitor Resolutions 1 and 3 of 2003 in order to ensure that the education system functions effectively.
- Measures must be adopted to ensure that educators perform at acceptable standards.

After some discussion on the matter the employer proposed that the matter be referred back to the committee and that all possibilities be explored to ensure the implementation of DAS, including:

- a work study.
- Re-allocation of personnel.
- Creation of posts.

Labour indicated that the employer commits itself to the full implementation of DAS.

The employer advised that there was no doubt regarding their commitment to the implementation of DAS.

### **Decision**

12. A reporting format shall be designed to assess the implementation and success of DAS in each district and circuit.
13. The employer commits itself to the implementation of DAS. Reallocation of resources shall be investigated in order to ensure such implementation.

Recommendation 3 of the report was moved by Mrs. Dlamini and seconded by SADTU.

Mr. Ngcobo advised that a workshop on the ELRC resolutions was planned and that unions would be invited.

SADTU indicated that:

- The workshop should preferably be held after the 19<sup>th</sup> of June when national guidelines would be finalized.
- There was a need for chamber delegates to be trained.
- Officials of the employer in Vryheid and Ulundi regions indicated that they were not a part of the agreements.

Mr. Ngcobo responded that:

- Such statements by officials were unfortunate and cannot be sanctioned.
- The employer was a signatory to the agreements and was bound by the agreements.
- The proposed workshop could include the issue of leave.

Recommendation 3 was not adopted.

With regard to section 5 of the report labour indicated that:

- The last sentence did not make sense.
- Clarity was needed on whether NTAs would continue.

Mrs. Zulu indicated that:

- NTAs would continue.
- Co-ordination was problematic since personnel have been re-deployed.
- NTA was currently an add-on responsibility.

### **10. Special Projects**

The report was presented by the secretary.

Mover :       The secretary  
Secunder:     SADTU

Recommendation 1 was moved by the secretary and seconded by SADTU.

There were no objections.

**Decision**

14. Labour shall provide the convenor for the Special Projects Committee and shall forward the name to the secretary.

The employer proposed that the convenor of the committee from labour.

SADTU supported the proposal and indicated that labour would consult and provide a name to the secretary.

SADTU advised that it would be best to induct the newly appointed educators whilst they were still enthusiastic.

**Decision**

15. The following Special Projects shall be undertaken for 2003:

- HIV and Aids Day
- Orientation and Induction of New and Young Teachers.
- National Women's Day
- World Teachers' Day

16. The first project shall be the Orientation and Induction of New and Young Teachers and the committee shall meet as a matter of urgency to attend to the organization of the event.

The employer indicated that the logistics of such an induction ceremony be referred to the committee.

**9. Ratification of Policies**

Mr. Ngcobo proposed that the adoption be deferred to the next chamber meeting.

The proposal was supported unanimously.

**Decision**

17. The ratification of HR Policies be deferred to the next Chamber meeting.

Mr. Gcwabaza indicated that:

- HRM 13A of 2003 on the management of unused leave in the leave cycle was issued by the Department.
- Although the circular was dated February labour was seeing it for the first time.



Mr. Ngcobo apologized for the delay and advised labour that the circular was only applicable to office based staff.

**10. Date of Next Meeting**

The date of the next meeting would be on 15 August 2003 or 08 August 2003 depending on the revised ELRC calender.

**11. Signing of Resolutions**

There were no resolutions to sign.

**12. Closure**

With no other matters to discuss, the chairperson thanked parties for their attendance and participation and terminated the meeting.

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**CHAIRPERSON**

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**SECRETARY**

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**DATE ADOPTED**



# Education Labour Relations Council KwaZulu Natal Chamber

elrc

P.O. Box 40045  
Red Hill, 4071

Tel (031) 5731777  
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## Minutes

Meeting: Chamber Meeting  
Date: 15 August 2003  
Venue: ELRC Offices  
55 Church Rd.  
Red Hill

### 1. Welcome

The chairperson of the meeting, Mr. V.I. Ngidi, welcomed all delegates to the meeting and commenced proceedings with a prayer led by himself. He expressed disappointment at the delay in the commencement of the meeting.

### 2. Attendance & Arrangements

Attendance - As per register

Arrangements: The secretary informed parties of the arrangements for the day and urged parties to make a concerted effort to conclude the business of the meeting by 14h00 as the AGM was scheduled for 16h00 and delegates would need to have a break before the AGM.

The secretary thanked the Chairperson, Mr. V.I. Ngidi, for chairing all chamber meetings since the last AGM although he was elected as the deputy.

### 3. Apologies

Mr. M.V. Gumede

Mr. N. Gcwabaza

Would arrive late

Dr. E.V. Nzama

Mr. K.K. Nkosi

would leave at 13h00

Ms. H. Kruger

Mr. Thabede

Mr. Nkosi introduced the new SADTU delegates to chamber, as did Mr. Ngcobo, who introduced the new employer delegates.

#### **4. Adoption of the Agenda**

The agenda was adopted without any change.

Mover: Mr. K.K. Nkosi  
Seconder: Mr. B.P. Mpungose

#### **5. Adoption of the Minutes of the Previous Meeting**

The minutes were adopted after minor editorial corrections.

Mover: The Secretary  
Seconder: Mr. B.P. Mpungose (NAPTOSA)

#### **6. Matters Arising**

##### **6.1 Stanco Report**

The Stanco Report was presented by the secretary and adopted by the meeting.

Mover: The Secretary  
Seconder: Mr. Ngcobo

Recommendation 1 of the report was adopted unanimously.

Mover: The secretary  
Seconder: K.K.Nkosi (SADTU)

#### **Decision**

- 1. A full training workshop on the leave manual be conducted in each of the regions by the Department of Education (KZN) and that educator unions be invited to such workshops.**

Mr. Mpungose requested that time-frames be attached to the recommendation.

Mr. Ngcobo indicated that:

- The workshop would most likely be conducted before the examination period.
- It may be necessary to stipulate certain conditions eg.exclusion of grade 12 educators, should it be necessary.

SADTU indicated that:

- The workshop was needed.
- The 80 hours was not being utilized.

- There was sufficient time before the examinations to conduct the workshops. It could be held before the end of September.
- There was currently inconsistent application of the measures in the different regions.

Recommendation 2 was moved by the secretary and seconded by NAPTOSA.

There were no objections and the decision was unanimous.

### **Decision**

- 2. Leaders of Parties must follow-up on decisions of chamber to ensure that the various individuals and structures fulfill their obligations.**

SADTU requested that the AGM be postponed to 18h00 hours.

The secretary advised that 18h00 would be too late as the gala dinner was scheduled to commence at that time and outside guests were invited and it would be rude to cause them to wait whilst we were engaged in the AGM.

After a brief discussion it was agreed that the AGM be postponed to 17h00, on the condition that the meeting commences promptly.

Recommendation 3 was moved by the secretary but after a brief discussion it was agreed that the adoption of the recommendation be deferred until the meeting proceeds to the item on Grade-R.

#### **a. Staffing**

##### **6.2.1 PPN and Related Matters**

The report was presented by Mrs. Dlamini, who requested that the title, 'KZN Department of Education and Culture', be deleted.

After a brief discussion it was agreed that a section on MTEF be added to the report, since it was evident that the employer had indicated that:

- The next consultation would occur before 26 August 2003.
- Labour would receive written responses, before 26 August 2003, on the queries raised.

at the Staffing Committee meeting.

The report was thereafter adopted.

Mover: Mrs. Dlamini

Seconser: Mr. Mchunu

Mrs. Dlamini thereafter moved for the adoption of recommendation 1. Ms. Pardesi questioned the need to discuss the issue of upgrading and absorption when it may fall outside the scope of chamber.

The employer indicated that they were willing to discuss the issue in the chamber or elsewhere, depending on which was the appropriate forum.

Mr. Gcwabaza explained that the issue was still relevant to the ELRC and that the committee could make a recommendation to chamber for consideration

After much discussion on whether a proposal from the employer was in existence, it was agreed that until such a proposal was presented to the committee or to chamber, parties were not in a position to vouch for its existence.

Recommendation 1 was finally adopted on the motion of Mrs. Dlamini and was seconded by Mr. Gcwabaza.

Mr. B.P. Mpungose questioned the relevance of 2.1.4 of the report when there was no proposal in existence.

SAOU cautioned that Resolution 7 had a time frame, which would expire in September 2003.

Labour agreed that the matter must be resolved urgently.

**Decision**

**3. All parties should consult on possible means of dealing with the problem of upgrading and absorption of ex-college educators in a way that would not be in conflict with PSCBC Resolution 7 of 2002.**

Recommendation 2 was moved by Mrs. Dlamini.

SADTU requested 5 minutes to caucus and with the permission of the meeting the chairperson acceded to the request.

SADTU thereafter reported that:

- They were still consulting with their members on criteria for single transfers.
- They propose that the matter be deferred.
- They proposed that the special chamber also consider the issue.
- Approximately 2 weeks would be required to conclude consultations.

The employer responded that:

- They had also not concluded their consultations.
- There were still a few issues to tie up.
- They support the proposal of SADTU that the matter be deferred.

SAOU questioned whether the moratorium on single transfers would continue.

NAPTOSA indicated that they:

- Had no problem with the proposal.
- Were concerned that single transfers were continuing although a moratorium was in place.
- Proposed that all single transfers be stopped immediately.

The employer indicated that:

- They were not aware of single transfers occurring within the department.
- Labour must provide the necessary information so that the matter could be investigated.

**Decision**

- 4. Criteria and procedure for single transfers be referred back to the committee.**

Mrs. Dlamini proposed the adoption of recommendation 3.

SADTU, supported by NAPTOSA and SAOU, proposed that DTTs and RTTs be included in the validation process.

All parties agreed to the addition and the recommendation was thus seconded by SADTU and adopted as a decision of chamber.

**Decision**

- 5. Draft bulletins must be validated and endorsed by Regions, SEMs, Principals, DTTs and RTTs.**

Mr. K.K. Nkosi indicated that disciplinary action must be taken against officials responsible for errors.

NAPTOSA added that officials must ensure that principals' signatures appear on forms.

### **MTEF**

Mr. N. Ngcobo reported that:

- Many problems were encountered in the determination of the L:E ratio.
- The statistics revealed that the ratio was not favourable.
- The CFO was negotiating with treasury for more funds to improve the ratio.
- Labour was requested to accede to a delay in the finalisation of the PPN.
- KZN may not be ready for the national presentation .
- Questions submitted by labour have been answered by the appropriate components of the Department and are being collated for presentation to labour.

SADTU indicated that:

- They hoped that negotiations with the treasury would result in a ratio of 1:32.
- The input of the employer meant that the employer would not report on 26 September 2003 at the national meeting.
- The delays in answering the concerns of labour were of serious concern.

Mr. B.P. Mpungose, supported by Mr. K.K. Nkosi, indicated that the following items were omitted from the report:

- New bulletin on Post Level 1 vacancies.
- Non-payment of the salaries of temporary educators.

### **Release of Bulletin**

Ms. Pardesi reminded chamber that the employer had agreed at the previous chamber meeting to release the bulletin before the closure of schools for the second quarter.

Mrs. Dlamini reported that:

- The issues were discussed in the staffing committee meeting.
- The report was discussed at the meeting and parties had not requested the inclusion of the items in the report.
- The employer was currently collating data and the bulletin would be ready by the end of August 2003.
- The PPN would be released in September and some of the advertised posts may not exist.

Labour was adamant that the posts ought to have been advertised long ago and that the new PPN cannot be used as an excuse not to release the posts.

Mrs. Dlamini responded that:

- It was important to minimize the withdrawal of posts.
- Posts that did not exist after the release of the PPN would have to be withdrawn from the bulletin.
- The demand of labour seems to be inherently contradictory.

Mr. Gcwabaza indicated that:

- Two separate processes were being confused in the discussion.
- The MTEF discussion was only relevant for the 2004 PPN, whilst the posts to be advertised currently existed and had been in existence for quite some time.

Mrs. Dlamini proposed that the matter be referred to the committee.

Mr. K.K. Nkosi indicated that the committee should discuss the issue and make recommendations to the special chamber meeting.

#### **Decision**

- 6. Staffing Committee must meet in the week following chamber to discuss the advertising of outstanding vacancies.**

Mr. Ngcobo reminded parties that the employer had circulated a document on the recruitment strategy of the employer and that parties should interact with the document and comment at the next chamber meeting.

#### **Non-payment of Salaries**

Mrs. Dlamini reported that:

- The issue was discussed at the meeting.
- Labour had agreed to supply the employer with lists of educators who have not been paid.
- The employer had not received such lists from labour.

Mr. Mpungose immediately presented a list of unpaid educators to the employer.

Mr. K.K. Nkosi indicated that:

- SADTU had supplied its list to the employer thrice.
- They need a definite answer as to when educators would be paid.
- He proposed a date prior to the end of AUGUST.



The employer indicated that they had not received the any from SADTU whilst SADTU insisted that the list was directed to Ms. Gwala.

Ms. Pardesi indicated that:

- It was totally unacceptable not to pay educators for their services.
- The highest provincial office promised that all payments would be made by 13 August 2003.
- The employer had thus publicly demonstrated its inefficiency.
- The employer had made huge savings by not paying the educators.
- It was immoral to make teachers beg for their money after they had delivered services.

Mr. Ngcobo indicated that:

- The issue was also of serious concern to the employer.
- The employer obtained no joy from the current situation.
- The employer is addressing the problems at various levels.
- It would be impossible to ensure that all educators were paid by the end of the day.

Labour indicated that:

- It took very little time for SEMs to confirm appointment and thereafter officials could verify whether payment was made in PERSAL.
- The employer must demand from officials, the information needed to ensure that educators were paid.

After much debate on the matter Mr. Mpungose proposed that the employer be given time to caucus and thereafter return to chamber with a firm time frame.

The proposal was supported by SADTU.

Chamber was thus adjourned for 10 minutes and when it resumed, Mr. Ngcobo reported that:

- The senior officials of the department were contacted.
- They had not received any list from SADTU.
- They proposed that the list be issued by hand.
- The employer undertakes to ensure that all unpaid educators be paid by Tuesday, 19 August 2003.

Mr. Shezi of SADTU indicated that:

- All conditions of service must be enforced
- Procedures must be established to ensure that payment is made within 3 days of receiving the list.
- Such crises must be avoided in the future.

**Decision**

7. All unpaid educators employed by the Department of Education and Culture (KZN) must be paid by Tuesday, 19 August 2003.

**6.2.2 Promotions and Related Matters**

The promotions report was presented by Dr. Hlatshwayo.

Mr. Mpungose indicated that the allegations of withdrawal of the ECD and ABET P.L.5 posts were to be investigated and chamber was to receive a report but the report omitted such information.

All parties agreed to the inclusion of the above information in the report.

After editorial corrections SAOU advised that the report was incomplete in that procedure manuals for acting appointments for both school and office-based posts were omitted.

After the inclusion of the above the report was adopted.

Mover: Dr. Hlatshwayo

Seconder: Mr. Mpungose

Mr. Ramcheron directed chamber to decision 6 of the previous chamber meeting and requested a report on progress.

Dr. Hlatshwayo indicated that the employer was still in the process of soliciting information from HRM circulars 52 of 2002, 34 and 40 of 2003 and a report would be presented.

Ms. Pardesi insisted that in terms of a previous decision, the employer is obliged to fill all posts advertised in HRM circular 52 of 2002.

Mr. Ngcobo indicated that he was not aware of such a decision.

Ms. Fisher indicated that decision 10 of the previous chamber meeting required the employer to present a report on compliance with the staffing norm ratio. She proposed that the information be presented by the next Staffing Committee meeting.

The employer seconded the proposal.

**Decision**

- 8. The employer shall provide information on the staffing/post level ratio norms applied in terms of PAM.**

Mr. Ramcheron indicated that HRM circular 62 had schools incorrectly placed in districts.

Ms. Fisher proposed that:

- The employer redirect all applications submitted to the incorrect office
- The employer circulates an addendum correcting all mistakes.
- All applications sent to incorrect department offices be redirected by the department to the correct office.

**Decision**

- 9. Owing to schools being incorrectly placed in districts, the employer would redirect all applications that were sent to the wrong districts to the correct districts.**

Mr. Ramcheron indicated that:

- There were various errors with the forms, including the C.V. forms
- Such errors would lead to unnecessary disputes.
- The process must be corrected urgently
- Shortlisting and interviews must be done in terms of Resolution 11 of 1997.

Ms. Fisher advised that it was imperative for an addendum correcting all errors to go out to schools urgently.

Mr. Nkosi enquired whether the 659 posts included posts created as a result of increased enrolment.

The employer indicated that:

- It did not include such posts.
- 1212 posts were originally announced.
- 541 posts were withheld

Ms. Fisher complained that:

- Validation, it seemed, was not done.
- It was inconceivable that the same school could advertise 2 principal posts and such errors were not detected.

- The errors were far too many and went against the understanding reached at chamber.

Dr. Hlatshwayo responded that:

- He could not agree that no validation was done.
- He agreed however that validation may not have been adequate.

Mr. Ngcobo proposed that the DTTs and RTTs also be involved in validation to avoid further problems.

All parties agreed.

### **Decision**

#### **10. Validation of all promotion bulletins must include DTTs and RTTs**

Mr. Ramcheron requested reasons for choosing 19 January 2004 as the date for assumption of duty.

Dr. Hlatshwayo indicated that:

- 12 September 2004 was the closing date for applications.
- The closing date may have to be extended.
- The processes in terms of the procedure would continue until 05 December 2003
- Schools cannot be disrupted in the last quarter.

SADTU proposed 01 November 2003 as the date for assumption of duty and suggested that the management plan be adjusted accordingly.

Mr. Ngcobo advised that the management plan would have to be discussed with the CEO and they were therefore unable to provide a response.

Mr. Nkosi indicated that:

- It was necessary for managers to be in school to plan for the following year.
- The CEO is not above chamber and does not have the right to veto chamber.
- The issue is a matter of mutual interest.
- Educators remain at school for 2 weeks after school closes so that they could plan for the following year.

Mr. Ngcobo noted the motivation of SADTU and indicated that they would consult their principals on the matter.

Recommendation 1 was thereafter unanimously adopted.

**Decision**

**11 A circular must be issued to:**

**11.1 Withdraw all duplicated and erroneously advertised posts.**

**11.2 Advertise the remaining 541 posts and other posts that may have been omitted, by 22 August 2003.**

Parties agreed that the issue of the management plan could be discussed at a special chamber meeting should such a meeting be called.

Recommendation 2 of the report was thereafter moved by Mrs. Dlamini and seconded by Mr. Mpungose.

Ms. Fisher proposed that 'BA' be removed and replaced with 'Batchelor's Degree'.

The amendment was accepted and the recommendation was adopted as a decision of chamber.

**Decision**

**12 The PGSES posts at Head Office be reinstated and all other processes that were halted be allowed to proceed unhindered.**

**13 With reference to decision 12 above, all other withdrawn posts at regional and district levels be re-advertised without discriminatory clauses and the advertisement be changed to read: "the applicant should be in possession of a Batchelor s Degree with Psychology as a major.**

SADTU with reference to 5.3 of the report requested the employer to provide chamber with a progress report.

After a brief discussion it was agreed that the employer would report at the next Staffing Committee Meeting.

**Decision**

**14. The employer shall report on the grading of teachers' centers at the next committee meeting.**

Mr. Mpungose questioned whether the employer had investigated the status of the L5 ECD and ABET posts and whether they were withdrawn.

Dr. Hlatshwayo confirmed that an investigation was done and that no posts were withdrawn.

SADTU advised that some schools did not receive HRM circular 40 and that many who did receive the circular found that forms were missing.

Dr. Hlatshwayo indicated that an investigation would be done.

Labour raised the issue of acting appointments and indicated that a procedure needed to be developed to ensure that such appointments are made fairly and that no appointment should be made that would be in conflict with the agreements or not in terms of the agreement.

## **6.2 Grade-R**

The secretary explained the background to the grade-R issue, which included:

- The Richards Bay agreement
- Difficulty in identifying the 900 grade-R posts.
- The increase in the no. of posts which resulted from increase in admission age.
- Impact on staffing of the school according to the PPN.
- The status of grade-R educators who were not state-paid.

The secretary presented the recommendation from Stanco concerning grade-R.

SADTU supported the recommendation and requested that a time-frame be attached to the recommendation.

After a brief discussion it was agreed that much of the information was already available from EMIS.

SADTU indicated that:

- The AGS forms had all the relevant information.
- The matter must be concluded as soon as possible.
- They hoped that the conditions of service of the educators were not affected.

Mr. Ngcobo indicated that:

- Whilst much of the information was available, it would be difficult to locate the 900 posts.
- He was not aware of any change in the conditions of service of the said educators.

Recommendation 3 of the Stanco report was unanimously adopted.

**Decision**

**15. The KZN Department of Education and Culture shall conduct an audit and provide statistics on:**

- **The number of primary schools in KZN.**
- **The number of schools with Grade-R classes and the number of such classes.**
- **The number of state-paid educators teaching Grade-R classes and the schools in which they are located.**
- **The information must be provided by the next chamber meeting.**

**6.3 Skills Development**

The report was presented by Mandla Msweli, the convenor of the committee and thereafter adopted by chamber.

Mover: Mr. Msweli  
Seconder: Mr. D. Naidoo

Recommendation 1 of the report was moved by Mr. Msweli and seconded by Mr. Ntshangase.

SADTU requested that a time frame be added to the recommendation but the employer indicated that they would respond later to the issue of a time frame.

The recommendation was adopted.

**Decision**

**16. The employer shall provide the complete audit of all unqualified and under-qualified educators within the Department of Education and Culture – KZN.**

SADTU questioned whether the NPDE referred to in the report was the new NPDE or a continuation of the previous NPDE.

Mr. Msweli indicated that it was a new NPDE programme that was different from the one funded by the ELRC.

Mr. D. Naidoo presented a written proposal for provision of financial assistance to education therapists and psychologists for professional development.

After a brief discussion it was agreed that the proposal be first discussed at the committee and that the committee makes a recommendation to chamber.

**Decision**

**17. The motion titled 'Education Therapists and Psychologists: Financial Assistance for Continuous Professional Development (CPD)' be tabled at the committee meeting for discussion.**

Mr. N. Gcwabaza indicated that:

- The whole issue of skills development must be considered in greater detail.
- Skills development programmes are scattered in different sections of the department
- There seems to be a lack of co-ordination amongst the programmes within the different sections.
- Labour, as a result, is unsure of the content of the learnerships and the accessibility of the programmes.
- Skills programmes ought to address gaps identified through the implementation of DAS.
- The issue of skills development for therapists, psychologists, etc must also be addressed in a co-ordinated manner.

Ms. Stella Khumalo advised that the focus must be broadened to include both learnerships and skills programmes.

All parties agreed with the sentiments expressed by the speakers and the following decision was adopted:

**Decision**

**18. The Committee must focus on learnerships and skills programmes to address the skills gaps that may exist within the educator core.**



#### **6.4 Employment Equity**

The report was presented by Dr. Hlatshwayo.

Mover: Dr. Hlatshwayo  
Seconder: Mr. Ramcheron

Dr. Hlatshwayo moved for the adoption of recommendation 1.

SAOU indicated that they were not sure whether all inputs by SAOU were accommodated within the new document.

Mr. Ramcheron indicated that:

- The committee was concerned that the AA policy was not adopted.
- It discussed the draft point by point.
- All unions were present and agreement was reached on the manner in which concerns could be accommodated
- Since parties had not seen the final version, adoption could be deferred to the next chamber meeting.

The secretary advised parties that adoption was urgent since SGBs would need guidance when making recommendations to the Head for appointment.

#### **Decision**

**19. The draft Affirmative Action Policy be deferred to the next chamber meeting for adoption.**

Recommendation 2 of the report was moved by Dr. Hlatshwayo.

Mr. Ramcheron explained that

- The plan was adopted by the consultative forum
- All educator unions were party to the forum.
- The only reason for presenting it to chamber was for ratification in order to avoid disputes that may arise.

After a brief discussion it was agreed that the EEP be deferred to the next chamber meeting for ratification.

#### **Decision**

**20. The ratification of the Employment Equity Plan be deferred to the next chamber meeting.**

Recommendation 3 of thereport was moved by Dr. Hlatshwayo and seconded by Mr. Ntshangase.

The recommendation was adopted unanimously.

**Decision**

**21. The stakeholders be workshopped on Employment Equity and the following documents be distributed:**

**21.1 Employment Equity Plan**

**21.2 Affirmative Action Policy**

**21.3 Employment Equity Report (workforce profile)**

**6.6 Displaced Educators**

The report was presented by Mr. S. Naidu.

Mover: Mr. S. Naidu

Secunder: Mr. N. Ngcobo

Recommendation 1 was moved by Mr. Naidu and seconded by Mr. K.K. Nkosi.

**Decision**

**22. The departmental regions and organized labour interact with the final list and conduct an audit of all displaced educators, including post level 1 educators and promotion post holders.**

Recommendation 2 was moved by Mr. S. Naidu and seconded by Ms. Pardesi.

**Decision**

**23. A final audit of displaced educators be conducted at a provincial level by the Displaced Educator Committee before a Closed Vacancy List for displaced promotion post holders could be issued.**

## **6.5 Dispute Prevention**

The report was presented by Mr. S. Naidu.

Mover: Mr. Naidu

Seconder: Mr. Ramcheron

Mr. Ngcobo proposed that the grievance procedure, once adopted, be signed as a collective agreement.

### **Decision**

**24. The document titled, 'Procedures for dealing with School Based Promotion Grievances' be deferred to the next chamber meeting for adoption and that the secretary presents it in the format of a collective agreement.**

Mr Ramcheron indicated that:

- There was a need to streamline grievances in terms of PAM.
- The Dispute Prevention Committee needed to play an interventionist role in attempting to resolve grievances prior to them becoming grievances.
- Parties needed to learn from previous successes.

Mr. Ngcobo indicated that:

- He supported the proposal in principle.
- Many cases get resolved at conciliation at great cost.
- Such cases could be resolved at no cost if the committee could facilitate resolution.
- Individuals would still have the right to refer matters to council.

### **Decision**

**25. The Dispute Prevention Committee must prepare a proposal on procedures to minimize disputes referred to Council.**

Mr. Gcwabaza requested a progress report on decision 11 of the previous chamber meeting, which was aimed at addressing the unimplemented awards and conciliation agreements.

Mr. Naidu reported that:

- Unions were required to submit such agreements and awards to him.
- He had not received such correspondence from the unions.

- SADTU did submit some information and he would interact with SADTU on those specific issues outside of the meeting.

At this juncture SADTU requested leave to attend the memorial service of one of the leaders of the democratic movement. The leave was granted and SADTU left the meeting.

### **6.8 FET**

Tabling and discussion of the report was deferred to the next chamber meeting or the special chamber meeting.

### **Decision**

**26. The presentation of the report be deferred to the special chamber meeting, if such a meeting is called, or else to the next chamber meeting.**

### **6.9 DAS**

The report was presented by Mr. Nkosi.

Mover: Mr. Nkosi

Seconder: Mr. Goba

Mr. Mpungose questioned the basis for recommendation 1.

Mr. Ngcobo reported that:

- Some perception existed that the employer was not totally committed to the implementation of DAS.
- The problems experienced during restructuring may have fuelled such perceptions.
- The purpose of the recommendation was to dispel any such notion.

SAOU contended that:

- Commitment to DAS was not a matter of choice.
- All parties were obligated to support the implementation of DAS.
- The DAS/WSE protocol needed to be considered.
- DAS was a part of Teacher Development whilst WSE was a part of Quality Assurance.
- A final implementation strategy was necessary.

Ms. Fisher advised that IQMS was almost complete and it would warrant a review of the committee.

After a brief discussion it was agreed that the current committee be retained and that recommendation 4 be adopted.

Mover: Mr. Nkosi  
Seconded: Ms. Fisher

**Decision**

**27. The name of the DAS Committee be changed to include other related initiatives.**

**6.10 Special Projects**

The report was presented by the secretary.

Mover: The secretary  
Seconded: Mr. Mpungose

Mr. Mpungose indicated that:

- The Induction programme was hosted by the ELRC, KZN Dept. of Education and Culture and SACE
- The KZN Dept. of Education and Culture were represented in the ELRC as were the Unions.
- There was no need to include the KZN Department of Education separately.

The secretary explained that:

- The Department of Education functioned in different capacities, both as part of the ELRC and as the primary provider of education in KZN.
- The ELRC on its own in KZN did not have the capacity to convene such an event.
- The support of the CEO, regional senior managers and district managers were important to ensure that the educators were available to attend.
- Various logistic arrangements required the capacity of the Department.

Mr. Mpungose proposed that the ceremony be conducted by 2 programme directors and that the provincial secretary be one of the directors.

The employer accepted the proposal.

**Decision**

**28. The Induction Ceremony for newly appointed educators be co-directed by the provincial secretary of the ELRC.**

**7. Ratification of HR Policies**

The matter was deferred to the next meeting.

**8. Date of next meeting**

The next scheduled chamber meeting was set for 19 September 2003 but parties would request for a special chamber meeting should it be necessary.

**9. Signing of Resolutions**

The secretary explained that the previous 2 resolutions of chamber had a technical error that had to be corrected and that parties were therefore required to re-sign the resolutions and that leaders should therefore remain behind after the meeting to sign.

**10. Closure**

The chairperson thanked parties for their attendance and participation and for their support.

Mr. Ngcobo complimented the chairperson for managing the chamber during difficult times and for remaining impartial.

Mr. Mpungose echoed the sentiments of Mr. Ngcobo and thanked Mr. Ngidi on behalf of Labour.

Mr. Goba closed the meeting with a prayer.

\_\_\_\_\_  
**CHAIRPERSON**

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**DATE ADOPTED**

Addendum E: KZN Arbitration Awards

**KWAZULU NATAL**

**Promotions**

**Arbitration Awards**





## EDUCATION LABOUR RELATIONS COUNCIL ARBITRATION AWARD

**ARBITRATOR:** PROF K GOVENDER  
**CASE NO:**  
**DATE OF AWARD:** 26 APRIL 1999

### IN THE ARBITRATION BETWEEN:

**G STOBIE**  
 Union/Applicant  
**ASSOCIATION OF PROFESSIONAL EDUCATORS**

**AND**

**THE DEPARTMENT OF EDUCATION AND CULTURE**  
 Respondent  
**PROMOTIONS DIRECTORATE (THE DEPARTMENT)**

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### ARBITRATION AWARD

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#### **TERMS OF REFERENCE**

It was agreed that my terms of reference would be in terms of resolution No 7 of 1997.

Clause 2.1 states:

*"The terms of reference of the arbitrator shall be to arbitrate any dispute referred to him/her, and to award a remedy which he/she considers fair and/of appropriate in order to settle the dispute."*

The Union was represented by Mr Pierce and the department by Mr Sunil Mahabeer. I am grateful to both representatives for the detailed arguments made in this matter.

#### **THE FACTS**

On the 17/9/1997, the department advertised school based promotions. It stated that the closing date for applications would be the 21/11/1997. It also listed *inter alia*, the procedures to be followed when applying the minimum qualification and service requirements, the procedure and criteria to be adopted in short-listing and selecting the

successful candidates and a list of the vacancies. Relevant for our purposes, was 2.3 (the original rule of eligibility):

*Those educators who at their own request, have been retired prematurely on pension, on medical grounds or Voluntary Severance package are precluded from applying for posts advertised in this bulletin.*

There were no other express exclusions. It is common cause that the grievant did not fall within this restriction and was thus entitled to apply for the positions stated in the advertisement.

In reliance on this advertisement, the grievant applied for positions, was interviewed in respect of three schools and from the evidence, may have been the preferred candidate at least at one and possibly at two schools. The grievant states that at Alexandra Boys High School, he was the only candidate that was a non-serving educator in the department. A decision had been made by the governing body, which had to be reviewed in an emergency meeting after a second, circular from the department, restricting the applicants to serving educators. He concluded from this that his successful application was being rescinded in favour of another candidate because of the departmental circular.

On the 10/2/1998, the Director of Promotions, Mr M M Moodley, dispatched a circular to the Regional Chief Directors. In terms of clause 1.1 of this circular, only serving educators were eligible for transfer/promotion to post level 2 and higher post level vacancies in education. In effect this circular materially altered the disqualification clause contained in the original circular issued on 17/9/1997. The grievant was an educator, employed by a non-governmental organisation, and as a consequence of the second circular was rendered ineligible for the posts advertised.

THE ISSUE:

Did the department commit an unfair labour practice by changing the rules of eligibility after the process was started in terms of the previous rules? The grievant argued that it did and I was requested to direct the department to appoint him to a post equivalent in rank to that for which he had been short-listed at Alexandra Boys.

## **THE FINDINGS**

The evidence, at best for the grievant, was that he was the preferred candidate of the governing body of Alexandra Boys School. It was clear that the power to make a formal offer of employment as an educator nature vested in the Secretary of Education of the province. The department detailed steps, which have to be followed after the decision of the governing body and before the final decision of the secretary. The grievant was aware that a binding offer would have to be made by the secretary of education. In this case no binding offer of employment was made by or on behalf of the department of the grievant.

The department acknowledged changing the rules and offered some justification for disqualifying all educators not employed as educators in state schools. The new rule would allow internal applicants to have opportunities for promotion and thus promote morale. Further the austerity measures and right sizing may result in educators having to leave the department. In this context, it would be incongruent to invite educators from outside the department to join the employ of the department. The new rules are rationally related to

legitimate state objectives. No satisfactory explanation was offered for the adoption of the criteria in the circular of 17/3/1997, which contained the original rule regarding eligibility. The union pointed out that prior to this circular being issued the department had completed its voluntary severance package programme and approximately 2000 educators left the department. The action of the department in inviting teachers from the outside to apply for posts after it had engaged in a process to reduce its numbers is perplexing and difficult to understand.

In short, the department rescinded a rule of questionable rationality in favour of a rational rule and disqualified the grievant in the process. It is my opinion, that the department has the right to change its policies and correct incorrect rules. However, no satisfactory explanation was offered for the initial circular of 17/3/1997. It appears, that the criteria for selection in this circular were determined without the department considering all relevant factors.

As no formal offer was made to the grievant, no contract existed between the department and him. He thus has no claim in contract. A further issue is whether the equitable principle of estoppel by representation is applicable in this instance. In terms of this principle:

*"...a person is precluded, is estopped from denying the truth of a representation previously made by him to another person if the latter, believing in the truth of the representation, acted thereon to his prejudice (Baxter Administrative Law (Juta 1994) 400)."*

There appeared to be no real substantive prejudice to the grievant in this case. No direct representation of a job offer was made. In the course of the hearing, the grievant testified that he had left his employment in anticipation of receiving a post in the department. He acknowledged that he did not receive an offer either from the governing body or from any person acting on behalf of the department. He stated that he felt satisfied that he had performed well in the interview and handed in his resignation on that basis. This premature action on the part of the grievant is not reasonable. My finding is that the grievant had not handed in his resignation on the basis of anything said or done on behalf of the department. He chose to resign for his own reasons. The principle of estoppel is thus not applicable.

After the department decided on the new rule, the matter was put before the Promotions Sub-Committee of the Chamber of the KwaZulu-Natal Department of Education and Culture which comprises representatives of the department and unions representing educators. The revised rule was accepted at a meeting of this body on 7/5/1998.

The new rule regarding eligibility then formed the basis for selecting candidates for promotion. The grievant argues that the department had created a legitimate expectation having advertised the old rule, to abide by them. A government department is legally entitled to adopt a change of policy if it deems this change to be prudent. If the change in policy unjustifiably infringes the rights of others, then the government must compensate individuals for such infringement. In my opinion, the government department must act fairly when changing rules. Fairness, in this context, would impose the following obligations on the department:

- It had to consult with the representative unions.
- It had to treat similarly situated educators equally.
- It had to provide a rational explanation for the change to individuals in the position of the grievant.

- It must recompense people who have incurred loss or damage on the basis of relying on the old rule.

The department consulted with the unions after the decision was made and I was informed that the unions supported the new rule of eligibility. Preferably and normally, these consultations must take place before the decision is taken. However, I accept that on the facts of this case, that the department had to act quickly as some schools were short-listing and interviewing on the old criteria. All persons in the position of the grievant were disqualified. Thus, no non-serving educators were eligible for appointment. As indicated earlier there was a rational explanation for the adoption of the new rule and the grievant was informed of the reason for adopting the new rule. The adoption of the new rule was thus not procedurally unfair.

As no satisfactory explanation was offered for the adoption of the original rule of eligibility, I must conclude that it was promulgated in error or negligently. This error resulted in inconvenience and loss to the grievant. The new rule of eligibility rendered void all his efforts. The grievant travelled to interviews and may have taken a day off work. He has every right to feel aggrieved. In the circumstance, I am of the opinion that at the very least, he must be compensated for the actual expenses incurred in attending the interviews. He must be compensated for travelling from his home to the school for the interviews and if he submits proof that he took leave for a day, then he must be compensated for that. His travelling expenses should be determined in accordance with the tariff used by the provincial government to compensate people using their vehicles for government work. If the parties cannot reach agreement on the amount, then that issue can be referred to me.

#### CONCLUSIONS AND AWARD

1. The grievance is dismissed.
2. The department is ordered to reimburse the grievant for all actual expenses incurred in attending the interviews.

DATED AT DURBAN ON 26 APRIL 1999

PROFESSOR K GOVENDER  
ARBITRATOR



## EDUCATION LABOUR RELATIONS COUNCIL ARBITRATION AWARD

**ARBITRATOR:** ADV S R BALION  
**CASE NO:** 05/2000 0579 KZN  
**DATE OF AWARD:** 25 APRIL 2001

### IN THE ARBITRATION BETWEEN:

**S GOVENDER**  
Union/Applicant

AND

**DEPARTMENT OF EDUCATION AND CULTURE**  
**(SOUTH DURBAN REGION)**  
Respondent

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### ARBITRATION AWARD

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#### DETAILS OF HEARING AND REPRESENTATION

The arbitration proceeded on 17 April 2001 at the Durban College of Education. The Applicant was represented by Mr A Pierce from APEK and the Respondent was represented by Mr R C Sibisi, the Superintendent of Education and Management, Labour.

#### ISSUE TO BE DECIDED

The issue to be decided is whether the Respondent committed an unfair labour practice in not promoting the Applicant to the post of Head of Department, Business Commerce and Management Studies, that is Post No: 4958.

#### BACKGROUND TO THE ISSUE

The above matter was certified as unresolved at a conciliation hearing on 27 March 2001.

It is common cause or not in dispute that:

- 1) The Applicant is employed as a Level 1 Educator at Marklands Secondary School.
- 2) The Applicant applied for the post of Head of Department, Business Commerce and Management Studies, that is Post No: 4958, in October 1999.
- 3) The Applicant together with eight other candidates were short-listed for the post.

- 4) The post was awarded to Mr U Maharaj who received the highest score of 39 out of 49 during the interviewing process.
- 5) The Applicant received the fifth highest score of 30 out of 49.
- 6) The relevant procedures of the Procedure Manual for processing school based promotions, dated 20/22 September 1999 (pages 7 – 27 of Exhibit A) reads as follows:

"4.6 Special Requirements for Head of Department Posts

4.6.2 An applicant must have at least two years of teaching experience in at least one subject within a group learning area to qualify for that learning area.

6. Interview Committee

6.3 Composition

- 6.3.1 One departmental representative (who may be the school Principal as an observer and resource person).
- 6.3.2 The Principal of the school if he/she is not the departmental representative except in the case where he/she is an applicant.
- 6.3.3 Three or five elected members of the Governing Body or co-opted members.

6.5 Secretary and Record of Proceedings

- 6.5.1 The Interview Committee shall appoint one of its members to perform the duties of Secretary or utilise the services of the school administrative clerk.
- 6.5.2 The maintenance of accurate records of all meetings is critical in the event of disputes. Records must indicate the date, names of all attendees and the constituencies they represent.
- 6.5.3 Every effort must be made to document relevant details in respect of the various selection processes.

6.5.4.3

- Record the various questions posed to the interviewees
- Interview Committee's preference of candidates in rank order together with scores.
- Motivation in respect of any supercession.

6.8 Withdrawal

- 6.8.1 A member who has a vested interest (by virtue of a blood relationship of marriage) in any applicant for the post must withdraw from this committee.
- 6.8.2 A member must withdraw from the committee if he/she considers that his/her close friendship with an applicant compromises his/her impartiality in the selection process.
- 6.8.3 A member who has withdrawn from the Interview Committee must be replaced by another member of the Governing Body or a co-opted member.

7.3 Role of the Observer

- 7.3.1 The observer will be present at all meetings of the interview committee during the short-listing and interviewing processes.
- 7.3.2 The observer will not be directly involved in the process of short-listing and interviewing, but will ensure that the approved procedures and practices are adhered to in a fair, consistent and uniform manner.
- 7.3.3 The observer has the right to intervene in terms of the procedures if he/she deems that there is an infringement.

7.3.4 In such an instance the observer must indicate to the Chairperson that he/she wishes to intervene.

- The observer must not discuss any question or comment in the presence of the interviewee.
- Discussions concerning the Intervention must take place after the Interviewee leaves the room.

#### 7.4 Responsibilities of the Observer

7.4.1 The observer must sign the declaration of confidentiality (Form EC 6) and adhere to the provisions thereof.

7.4.2 The observer must sign all relevant documents for short-listing and interviews.

7.4.3 The observer must first attempt to resolve any concern with the Interview Committee. Should consensus not be reached he/she must inform the Interview Committee in writing that he/she is declaring a dispute.

7.4.4 The observer must continue to participate in the process while the grievance / dispute is being addressed by the Dispute Resolution Committee.

17.6 The following FIVE criteria will be utilised for INTERVIEWS

a) Leadership: Administration, Management and Related Experience	7 x 2
b) Organisational Ability and Experience	7 x 1
c) Professional Development/Educational Experience and Insight	7 x 2
d) Leadership: Community Related	7 x 1
e) Personality & Human Relations	7 x 1
Total	49"

## **SURVEY OF EVIDENCE AND ARGUMENT**

### **The version of the Applicant**

The applicant testified that he had acted in the post as Head of Department Business, Commerce and Management Studies for two years and Mr U Maharaj, the successful candidate was under his control. In his opinion Mr U Maharaj's work performance was not outstanding in that on one occasion Mr Maharaj had refused to relieve him of one course when the typing teacher was off ill. Mr Maharaj said that he did not have experience of accounting and was not prepared to take the class.

He stated that Mr Gainchand, the secretary was not present at his interview. The Principal, Mr Moodley, had recused himself prior to the proceedings because he had told his staff that he had a relative who applied for a post and it would not be fair for him to be part of the proceedings. Nevertheless, he was an observer and sat at the back of the room and the panel sat in front. There were two other observers from SADTU and APEK.

He was asked five questions and given time to answer his questions. He could not say whether notes were taken, and if they were, they could not have been comprehensive. At the end of the interview he assumed that he had conducted himself adequately, and was fairly confident. His interview lasted approximately 25 minutes. Mr U Maharaj's interview only lasted about 12 minutes.

During cross-examination the Applicant agreed that Mr U Maharaj satisfied the criteria for the post. He was adamant that Mr Gainchand was not present during the interview. The Principal was not introduced as being part of the panel and the Applicant did not bother to enquire why he was present at the interview. He stated that if the Principal was present as a departmental representative, his role would have been to see that the interview was conducted fairly. He further stated that he assumed that the departmental representative would be part of the panel. He agreed during cross-examination that the participation of the Principal in the absence of a blood relative was not irregular.

### **The version the Respondent**

Mr S Moodley, the Principal at Marklands Secondary School, testified that at the interview of the Applicant he was the departmental representative in the form of an observer and resource person. He explained the procedure used at the interview and stated that he called the candidates in and when the interview was in process nobody left the room. When the Applicant was called in he was introduced to the selection committee. The chairperson introduced the members of the panel and the observers. He then gave a background of the school. This was done in respect of each candidate at the interview. He signed page 31 of Exhibit C in his capacity as the Principal and observer. His signature meant that everything was done fairly and according to procedure. He would not have signed if he had not participated.

He stated that to score the candidates, a meeting was held. The criteria were used and he did not observe anything irregular. In his opinion the process was fair.

There was no provision that persons who acted in the post would get additional points. The panel's assessment was based on the criteria in the circulars.

He stated that he had initially announced that he would recuse himself because his brother-in-law was applying for the post of Natural Science. He informed the Department that he would recuse himself from the whole process. The Department advised him that he would be an observer for all the other processes excluding the one which his brother-in-law had applied for.

He stated that prior to the interview he erroneously validated a few CV's. He brought this to the attention of his staff. They discussed the CV's and stated the candidates should write letters to SBG's that the CV's had been validated by the Principal in error and the candidates should submit new CV's. It was put to him that he had prior knowledge in respect of Mr U Maharaj and he stated that that was not the only CV that was validated by him. He did not discuss anything about Mr U Maharaj with the panel.

Mrs J Pardesi, the chairperson of the School Governing Body and chairperson of the Interviewing Committee at the time testified. She stated that the committee consisted of herself as a chairperson, Mr Gainchand as the secretary, Mrs Mthethwa and Mr Rugnundan. Prior to the interviews there were about four meetings with the committee whereby they were briefed on the procedure and the manuals. She stated that during the interview no one left the room. At the commencement, the candidate was welcomed, seated and introduced to members of the panel, the Union observers and the principal as a departmental representative. She stated that if anyone had not participated in the interview, that person would not be allowed to sign the process, because it was confidential and only those involved and present were allowed to sign.



Each candidate was scored by each member of the panel. Once a candidate left the room, the candidate was discussed and consensus reached on the score. Each member of the panel was given questions to ask. Points were allocated on the quality of the answers. No points were awarded for acting in the post.

She further stated that at the time of the scoring only she was in receipt of the CV's.

During cross-examination she confirmed that she attended a workshop on the procedure manual and in turn trained the committee members. She stated that all the candidates had managerial experience. The role of the Principal was that of a departmental representative and resource person. She was aware that he had recused himself for the Science post, but that was only during the short-listing process. The Principal was silent during the process. She was asked that whether he had prior knowledge of the documents and she stated that whatever documents were given to her came from the Department via the Principal. She did not take notice that the CV had been validated by the Principal prior to that. She did not regard it as irregular because that was not what she was looking for and is not specified as an irregularity.

She was adamant that Mr Gainchand was present throughout the interview. No one left the interview at any stage. The candidates were all asked the same questions.

Mr M Vasdev testified that he was the APEK observer at the interview. He observed the short-listing and interviewing process and attended all the sessions. He could not recall anything peculiar happening at the interviewing process. The process was in accordance with the procedure and practices set out in the manuals.

All the members were present at the interview of the Applicant and this could be confirmed by the minutes. The Principal was present as the departmental representative and resource person and that was made known to all the candidates. The chairperson introduced all the members and explained their functions. The fact that a candidate acted in the position was not taken into consideration.

In his view the interviews were consistent and at the end when each candidate left that candidate was discussed. If there was any inconsistency in the process, he would have objected.

During cross-examination he confirmed that the secretary, Mr Gainchand, was present throughout the interview and the Principal was present as a departmental representative and observer. The Principal did not comment at all unless he was asked to do so.

It was argued on behalf of the Applicant that:

1. The Applicant fulfilled all the requirements for the post.
2. He acted in the post for two years and supervised the work of the successful candidate.
3. In terms sub-paragraph 4.6 of the circular HRM No. 37 of 1999 the Principal indicated that a blood relative of his was an Applicant for the vacant position and was therefore excluding himself from the process. For consistency purposes the Principal should have

excluded himself from the process. However, he was part of the process during the interview stages.

4. The absence of a secretary prejudiced the candidates in that accurate records were not kept.

It was argued on behalf of the Respondent that:

1. The fact that the Applicant had acted in the post does not entitle him to the post.
2. Confidentiality was not one of the issues in dispute. No evidence was led to prove breach of confidentiality.
3. It was proved that the Principal was present throughout the interview.
4. The interview process and criteria applied were consistent and that no candidate was favoured or prejudiced.

### **EVALUATION OF EVIDENCE AND ARGUMENT**

The Applicant contends that he should have been promoted to the post of Head of Department, Business, Commerce and Management Studies instead of the successful candidate, Mr U Maharaj. This contention is based on the following:

1. The Applicant satisfied the necessary criteria for the post and had acted in the post for two years.
2. The absence of a secretary prejudiced the proceedings in that accurate records were not kept.
3. The interviewing process was flawed in that the Principal had indicated that he will be refusing himself from the process.
4. The role of the principal was not clear. As Principal he was an active participant and / or the departmental representative. This compromised his impartiality.

I will accordingly consider the evidence in respect of each of the above contentions.

It was not in dispute that the Applicant satisfied the necessary criteria for the post. Mrs Pardesi stated that all the candidates had managerial experience and were allocated points according to the answers given at the interviews. The fact that someone had acted in the post was not an entitlement to the post, neither was it a criteria to award bonus points. This was confirmed by all the witnesses for the Respondent, including Mr Vasdev who was a member of APEK, the Union of which the Applicant is a member.

Page 1 of Exhibit C reflects Mr U Maharaj as having obtained the highest score at the interview. The Respondent's witnesses confirmed that the interviewing process was fair and consistent and according to Mr Moodley and Mr Vasdev there was nothing untoward in the process. If anything was lacking or wrong they would have objected immediately.

I am accordingly satisfied on the evidence that the procedure whereby Mr U Maharaj obtained the highest score was not flawed. The Applicant obtained the fifth highest and was accordingly not the best candidate for the post.

The Applicant's second contention that the absence of a secretary prejudiced the proceedings in that accurate records were not kept. The witnesses for the Respondent adamantly confirmed that Mr Gainchand, the secretary was present throughout the proceedings. This was not seriously challenged by the Applicant's representative. Mrs Pardesi, who gave her evidence in an eloquent and unbiased manner, was clear that each member of the panel was present throughout the processes. She further gave me the impression of being a person who would arduously follow rules and procedures and not allow for any deviations there from.

I am satisfied on her evidence alone that Mr Gainchand was present. This is further corroborated by Mr Moodley and Mr Vasdev.

The contention that proper records were not kept must be examined in terms of clause 6.5.4.3 of the Manual which states that a record should be kept of the

- i) Various questions posed to the interviewees;
- ii) Interview Committee's preference of candidates in rank order together with scores.
- iii) Motivation in respect of any supercession."

Mrs Pardesi stated that the questions posed were standard for all the candidates and a printed copy was given to each candidate at the commencement of the interview. She unfortunately did not bring a copy to the arbitration hearing.

Page 1 of Exhibit C indicates the preference of candidates in rank order. In any event, Exhibit C contains all the score sheets and relevant documentation. I am satisfied that the necessary information was properly recorded.

The contention that the process was flawed in respect of the Principal is without foundation. The evidence does not establish any bias or irregularity by the presence of the Principal at the interview. The Principal's evidence concerning his intention to recuse himself and his participation in the process was not seriously challenged during cross-examination. The evidence of the Respondent's witnesses that the Principal was introduced as an observer was not challenged at all. There is no evidence to substantiate the contention that the presence of the principal was irregular and not according to the procedure manual.

I am accordingly satisfied in evaluating evidence that an unfair labour practice was not committed as alleged. The evidence clearly and satisfactorily indicates that the best candidate was chosen for the post. The procedure by which this was done could not be faulted. Further, the evidence of Mr Vasdev, a member of the Applicant's Union must not be ignored. He confirmed that the process was fair and according to procedure.

## **AWARD**

1. The non-allocation of Post No: 4958, that is, Head of Department Business, Commerce and Management Studies to the Applicant does not constitute an unfair labour practice.

2. The Applicant's application for relief is dismissed.
3. There is no order as to costs.

**S R BALTON  
COMMISSIONER  
EDUCATION LABOUR RELATIONS BARGAINING COUNCIL**



## EDUCATION LABOUR RELATIONS COUNCIL ARBITRATION AWARD

**ARBITRATOR: MS S I BALKARAN**  
**CASE NO: PSES 2045 KZN**  
**DATE OF AWARD: 12 JUNE 2002**

### IN THE ARBITRATION BETWEEN:

**SHIYANE HIGH SCHOOL**  
 Union/Applicant

**AND**

**DEPARTMENT OF EDUCATION**  
 Respondent

### ARBITRATION AWARD

#### **INTRODUCTION**

The South African Democratic Teachers' Union (SADTU) alleges that the procedure adopted in the filling of the Promotion Post No 2103 was unfair. The Respondent had advertised Promotion Post No 2103 – Principal of Shiyane High School. The Interview Committee, convened by the School Governing Body interviewed the short-listed applicants and ranked them in a particular order in terms of the assessments made at the interviews. When the Preference List was presented to the School Governing Body, the order of preference was altered with the candidate (Zulu) who was ranked second in the Preference List drawn up by the Interview Committee being ranked first, and accordingly qualifying to be offered appointment to the post before the others. Further, SADTU submits that the reasons for altering the order are unfair, on the basis that the only accepted reasons for altering the Preference List are based on Affirmative Action and Representivity.

#### **KEY ANALYSIS**

The promotion of Zulu was challenged as an unfair labour practice.

In respect of procedure to be followed, the applicant raised the issue that once a recommendation was submitted by the Interview Committee for ratification to the School Governing Body (SGB), the SGB could only alter the ranking order in order to give effect to (i) affirmative action, and (ii) representivity. The Respondent's contention is that the right of the SGB to exercise supercession is not limited by affirmative action and representivity.

In respect of the justifiability of the reasons advanced for supercession, the Applicant contends that the Department had laid down criteria for appointment, and the pre-determined criteria must be followed in rating applicants. The Applicant argues that candidates must thereafter be ranked in terms of their rating, unless effect has to be given to the principles of equity mentioned in HRM Circular No. 58 of 2001, same being affirmative action and representivity, and further that the issue of suitability had already been duly addressed in the pre-determined criteria for assessment.

### **THE COMMON FACTS**

The common facts are as follows:

1. The Interview Committee of the Shiyane High School had on 21 September 2001 interviewed applicants for the position, and ranked the applicants according to rating. The ranking and rating was as follows:
  1. Makhaye (36);
  2. Zulu (31);
  3. Khumalo (30); and
  4. Senye (28).
2. On 27 September 2001 at the ratification meeting, the School Governing Body altered the ranking order by superseding Makhaye with Zulu and superseding Khumalo with Senye.
3. Two letters supporting the supercession were accordingly sent to the Respondent, and Mr Zulu was recommended for appointment to the promotion post of School Principal.

### **THE ISSUES IN DISPUTE**

The issues to be decided are:

1. Whether or not the School Governing Body could, in the circumstances, alter the ranking order submitted by the Interview Committee; and
2. Whether or not the reasons for recommending Zulu as number one candidate were justifiable.

### **DISCUSSION OF EVIDENCE**

The Applicant called one witness, Mr Mbonani, a member of SADTU who was a Union observer in the short-listing and interview processes undertaken in the filling of the position of Principal at Shiyane High School. He testified that the interviews went well, and questions were asked and answers were rated following the guidelines set out in Resolution 11. He further testified that he and the other observer, Mkhabela had occasion to raise questions and that his (Mbonani's) questions challenged the rating where there was a big discrepancy in the scores. Mbonani stated that subsequent thereto, he attended the ratification meeting convened by the SGB where supercession was effected. He said that at the meeting he referred to the procedures for appointment that are outlined in the HRM Circular No 58, and relying on the contention that supercession could, in terms thereof, only be effected on the

basis of implementing affirmative action or ensuring representivity, he alleged that the supercession was irregular. He based this on the fact that both Makhaye and Zulu were Black males. He was informed that Zulu was preferred over Makhaye on the basis that Zulu lived closer to the school, was known to the members of the SGB, and could be disciplined by the SGB. Mbonani's evidence remained unchallenged under cross-examination by the Respondent's representative.

The Respondent called three witnesses. The first witness, Lindiwe Shabangu is the Chairperson of the SGB and also the Chairperson of the Interview Committee. She testified that she was unhappy with the interview process because the observer challenged the scoring. She stated further that scores were subsequently changed by two members. At the subsequent ratification meeting of 29 September, SGB members indicated to Shabangu that they wanted Zulu to be ranked number one, and that she would be required to write a letter motivating the change. She testified that the change was based on the following factors: He knew the community well, he did a lot of things for the community, and he has taught since 1987. Under cross-examination she elaborated on Zulu's suitability by stating that he was a church preacher and a geography teacher who taught during the holidays. Makhaye, on the other hand, was a Councillor and was involved in politics. Regarding the power of the SGB to invoke supercession, she testified that she was informed by certain members of the SGB that in terms of the South African Schools Act, the SGB has these rights. Shabangu appeared very evasive, particularly under cross-examination leaving critical questions on measures relating to the Ratification Meeting, unanswered.

The second witness, Ms Mkhabela is a member of NAPTOSA, and participated in the interviews as a union observer. She testified that the interview process was not fair, for the reasons that the SADTU observer as well as the Departmental nominee required the scores of Makhaye and Zulu to be justified. Mkhabela alluded to the appearance of bias on the part of the departmental nominee. She was present at the ratification meeting, and testified that she "could not say that she was happy with the supercession, but my understanding is that the SGB has the final say." Mkhabela testified further that the change in the ranking order was based on the fact that Zulu's assertions in the interview were true and that he had acted in the position (both of which were not advanced by the earlier witness as reasons). Under cross-examination she experienced difficulty in answering questions related to procedure and appeared very evasive. On procedure she emphasised that the SGB has the final say in terms of the S A School's Act.

The Respondent's third witness was Mr Dlodla, the Departmental nominee. Dlodla did not corroborate the evidence of either of the other two witnesses called by the Respondent. He testified that the process was not fair, for the reason that supercession was not effected according to due procedure. He stated that at the ratification meeting he drew the attention of the SGB to the provisions of the HRM Circular No 58. However, the minutes of the meeting reflected differently. When challenged on this, Dlodla stated that the minutes were incorrect. That the minutes did not correctly capture what transpired at the meeting was evident from the testimony of all the witnesses for the Respondent.

In determining whether the promotion was unfair, due consideration shall be given to both the procedure followed, as well as the justifiability of the reasons advanced for preferring Zulu to Makhaye.

## **1. Procedure: The issue of the right to invoke supercession**

In terms of the South African Schools Act 84 of 1996 (Section 20(1)), the functions accorded to School Governing Bodies include to:

*"recommend to the Head of Department the appointment of educators at the school, subject to the Educators Employment Act and the Labour Relations Act."*

Resolution 5 of the Education Labour Relations Council provides for the establishment of a Interview Committee which will be responsible, *inter alia*, for the interviewing and assessing of applicants for the purpose of making recommendations. Resolution 11 provides detailed criteria for assessment of candidates. The HRM Circular No 58 provides the procedure to be followed in making an appointment. Whilst the South African Schools Act gives the SGB the power to recommend to the Department the appointment of educators to the school, the process involved in executing this function is clearly prescribed in subsequent regulatory measures. These include delegation to the Interview Committee of the duty to rate and rank candidates (Resolution 5) and role of the SGB in making the recommendation thereafter (HRM Circular No 58). The reliance of the Respondent on the South African Schools Act for the SGB's absolute power regarding recommendation is accordingly rejected.

I consider it necessary, at this point, to comment on the Respondent's allegation that the interview proceedings were irregular. There were intimations of coercion and bias. Respondent's witnesses contradicted each other on the issue of fairness of the interview proceedings. In respect of the changing of scores, if this did happen there was certainly no evidence adduced to show coercion. The allusion to bias was based on the call for justification of the scoring. Requiring justification for the scoring does not amount to bias. In fact, failure to justify the scores may support a contention of the existence of bias on the part of those responsible for the rating. The claim of irregularity of the proceedings by the Respondent is accordingly dismissed.

## **2. The justifiability of the reasons advanced.**

The promotion criteria for the post had been pre-determined by the Department – as contained in Resolution 11. The witnesses for both Applicant and Respondent testified, without exception, that the pre-determined criteria had been used in assessing and rating the candidates. At the subsequent ratification meeting the reasons advanced supporting the recommendation that Zulu replace Makhaye as number one in the ranking order, are reasons that have been either already considered in making the assessment, or fall outside the accepted criteria. There is therefore no justification for preferring Zulu over Makhaye.

I accordingly find that an unfair labour practice has been committed on the basis that:

- The recommendation submitted by the SGB to the Respondent was procedurally unfair; and
- The agreed-upon criteria for appointment were not adhered to.

## **AWARD**



The act of preferring Zulu over Makhaye constitutes an unfair labour practice. I accordingly rule that Makhaye be recommended for appointment to the Post of Principal of Shiyane High School.

**S T BALKARAN**  
**ARBITRATOR**  
**12 JUNE 2002**



## EDUCATION LABOUR RELATIONS COUNCIL ARBITRATION AWARD

**ARBITRATOR:** BENJIA WHITCHER  
**CASE NO:** PSES 152 KZN  
**DATE OF AWARD:** 5 MAY 2001

### IN THE ARBITRATION BETWEEN

**SADTU and G BHAGWADEEN**  
**Union/Applicant**

**AND**

**THE DEPARTMENT OF EDUCATION**  
**Respondent**

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### ARBITRATION AWARD

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In November 1999 the promotion and appointment process for posts 7328 and 7329 at Golden Steps Training Centre was conducted by a selection committee appointed by the board of management of the School. The school did not have a governing body at that stage.

Although G Bhagwadeen is cited as the applicant the union indicated that it was the real applicant and had only cited G Bhagwadeen for administrative purposes to identify the dispute.

The union applicant declared a dispute to challenge the legitimacy and legality of the board of management and, as a consequence thereof, the appointments. The union could not state whether it had a direct problem with the resultant appointments. It submitted that the appointments were technically illegitimate because of the unlawfulness of the board. It requested that if I find in their favour I should set aside the appointments and direct that the appointments be processed by a Governing Body appointed in terms of the South African Schools Act 84 of 1996.

It is my finding that the union has not made out a case and the application is dismissed. I set out the reasons for my decision hereunder.

The department clearly established that the union withdrew the dispute on 10 April 2000 and confirmed the withdrawal on 13 April and 9 May 2000. The department handed up a document headed "Bilateral Agreement between SADTU and the Department of Education"

and it reads as follows: "In respect of posts 7328/9 of Golden Steps School. After a discussion between the SADTU, represented by Mlungisi Ntombela and the Department, represented by E V Nzama and I V Ngidi, it was agreed that the disputes declared by SADTU around Posts No's 7328 and 7329 be withdrawn". The document was signed by the representatives and two witnesses on 10 April 2000. The agreement is also recorded in the minutes of the DRC signed by both parties, namely SADTU and the department on 9 May 2000.

The union contended that the agreement is not valid because the DRC was disbanded thereafter and therefore all resolutions taken in that body are not valid. Further the union only agreed to withdraw the dispute because of the interdict launched by the school when the DRC took a resolution that the process be redone. I do not see any substance to this agreement. The union did not lead any evidence or refer to any resolutions, law or documents which prove that all proceedings during the tenure of the DRC are deemed invalid. I doubt such a ludicrous situation would be lawful. In any event that argument does not help because, as the department pointed out, the agreement was concluded outside of the DRC and was merely noted by it in its minutes. The argument that the union only withdrew the dispute because of the interdict does not detract from the fact that it withdrew the dispute. There is nothing in the agreement, which states that the agreement is merely a ruse and that the union intended to pursue it in the ELRC. Neither was any evidence led that the department was aware of this unrecorded intention at the time of the agreement. A written agreement is a written agreement and the terms thereof can only be gleaned from its contents. Further, it would make nonsense of labour relations, certainly, order and good faith bargaining if it was open to one party to an agreement to ignore the agreement. In light of my findings, it is unnecessary for me to deal with the substance of the dispute. However the department did correctly point out Section 54 of the South African Schools Act and Government Gazette No 252 of 1999, which clearly gave the board legal legitimacy until January 2000. The union contended that the board did not have political legitimacy. That may be so, but I am required to determine the legal legitimacy of the board. Further it was the new and democratically elected government itself that accepted and extended that legal grace to the board until January 2000. Therefore when the appointments in question took place, the board may have been politically incorrect, but it was legal. If the union wanted the technical legal principals not to be taken into account in its complaint against the board then it should have dealt with the matter as an organisational and political issue and not launched a challenge in a forum that must take into consideration technical laws as well.

## **AWARD**

The application is dismissed.

BENITA WHITCHER  
ARBITRATOR  
5 May 2001

## Addendum F: Matrices

**Concept matrix: Question 11: *What, in your opinion, are the root causes of conflict between employees and employer in the public education sector?***

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis of responses given Department officials and Teacher Organisations officials.

Respondent	Poor capacity Doe & SGB's & Teacher organisations	Politics	Poor communication	Opposition to TO's	Promotions	No clear direction	Inefficiency	Non Implementation of legislation	Unilateral decision making	Laziness & Ignorance	Misunderstanding	Non compliance to procedures and practices	Bad faith consultations	Nepotism	Mistrust	Attitude and lack of tolerance	Lack of transparency	Racism & Cultural Differences	Tardiness in responding to grievances	Mismanagement of funding
1	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓			✓
2	✓		✓	✓			✓	✓	✓		✓	✓	✓	✓						
3	✓					✓			✓		✓				✓		✓			
4	✓	✓		✓		✓		✓					✓	✓						
5	✓	✓						✓	✓					✓						
6		✓	✓		✓	✓						✓								✓
7					✓						✓	✓								
8		✓		✓			✓	✓												
9	✓	✓			✓															
10		✓			✓	✓	✓			✓								✓		
11	✓		✓				✓			✓	✓							✓		
12	✓		✓												✓				✓	
13	✓			✓																
14	✓		✓	✓		✓														
15					✓					✓		✓				✓				
16	✓									✓						✓				
17	✓		✓							✓						✓				
18													✓		✓				✓	
	12	7	7	6	6	6	5	5	5	5	5	4	4	4	4	3	2	2	2	2

Question 11	Frequency of reasons used by organizations	Total	Dept of Education	SADTU	APEK	NATU	SAOU	ELRC
Root Causes For Conflict	Poor Capacity of TO's, DOE, & SGB's	14	5	6	2	0	1	0
	Politics	8	3	3	1	0	0	1
	Poor Communication	6	2	1	2	0	0	1
	Opposition to Teacher Organizations	8	2	4	1	0	1	0
	Promotions	8	3	3	1	0	0	1
	No Clear Direction	4	1	2	1	0	0	0
	Inefficiency	6	1	3	2	0	0	0
	Non Implementation of legislation	4	1	2	1	0	0	0
	Unilateral Decision making	2	0	2	0	0	0	0
	Laziness & Ignorance	4	3	0	1	0	0	0
	Misunderstanding	5	1	2	2	0	0	0

Concept matrix

Question 12: How successful do you consider arbitration procedures of the Education Labour Relations Council's to be?

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about the success rate of arbitration in the ELRC.

Respondent	Very Effective/Successful	Effective /Successful	Problems with availability of commissioners	Problems with availability of witnesses	Setting Down Cases, procedural problems, adjournments delays cases	Circumstances that threaten success	DoE Evasive at grievance, conciliation and at arbitration	Implementation is delayed by DoE	ELRC inefficient	Allows for reviews at labour court	Poor Communication by ELRC	To many cases
1		✓	✓	✓								
2		✓			✓							
3		✓				✓						✓
4	✓						✓	✓				
5		✓						✓	✓		✓	
6		✓								✓		
7	✓				✓						✓	
8	✓					✓		✓		✓		✓
9		✓										
10	✓	✓			✓							
11	✓											
12	✓											
13		✓										
14		✓										✓
15		✓			✓						✓	
16	✓											
17	✓											
18	✓							✓			✓	
	9	10	1	1	4	2	1	4	1	2	4	3

Concept matrix

Question 13: *How understandable are the Education Labour Relations Council's documents?*

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about conflict arises from misunderstanding with ELRC Documents between the KwaZulu-Natal Education Department and Teacher Organisations.

Respondent	Very Simple & easy to understand	Easy for Unions to understand	Easily understood up to Union Branch Level & ELRC Parties	Not easily understood by department Officials and others	Needs help to understand	Advocacy & training materials not received by ELRC not done resulting in interpretation	Resolutions and training materials not received by educators	User/Reader friendly	Not user /reader friendly	Sometimes difficult to understand	Dispute forms are difficult to understand
1	✓					✓	✓				
2		✓		✓							
3				✓	✓						
4		✓	✓	✓							
5		✓							✓		
6		✓					✓				
7	✓			✓							
8	✓						✓				
9	✓			✓							
10				✓	✓						
11			✓		✓				✓		
12	✓									✓	
13	✓										
14	✓										
15			✓								✓
16	✓			✓							
17							✓				
18	✓									✓	
	9	4	3	7	3	1	1	3	2	2	1



Concept matrices

Question 14: *Do you feel the arbitration proceedings of the Labour Relations Council could be simplified?*

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about conflict from respondents with the KwaZulu-Natal Education Department and Teacher Organisations.

Respondent	Yes	No	Do Not Know	Register Disputes Provincially and Regionally	Expedited Con/Arb	Staffing the ELRC	Funding	Decentralised Commissioners	Pre-Arbitration	Set Time frames	Administrative Measures can be improved	Training officials for the process	Combine Conciliation & Arbitration as ONE Stop
1	✓			✓		✓	✓	✓					
2	✓				✓				✓				
3			✓										
4		✓											
5	✓			✓									
6	✓									✓	✓		
7	✓			✓									
8		✓											
9		✓											
10		✓											
11		✓							✓			✓	
12		✓											✓
13	✓				✓								
14		✓											
15	✓				✓								
16	✓											✓	
17		✓											
18		✓		✓					✓				
	8	9	1	4	3	1	1	1	2	1	1	2	1

Concept matrix

**Question 15: Do you feel there are alternatives to the arbitration proceedings of the Labour Relations Council that could be used?**

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about alternatives to arbitrations to transform conflict between the KwaZulu-Natal Education Department and Teacher Organisations.

Respondent	Yes	No	Do not know	Sub committees for different categories of dispute	Redefine grievance procedure in PAM	Use grievance procedure effectively	Collective / Mass Dispute resolution	Expedited Con/ Arb	Settlements on relief sought	Specialised Mediation Personality Clashes	Effective In house Grievance handling	Use of other grievance structures	Amend legislation
1	✓			✓	✓								
2		✓				✓							
3			✓										
4		✓											
5	✓					✓							
6		✓					✓						
7	✓							✓					
8	✓							✓					
9	✓								✓				
10		✓								✓			
11	✓										✓		
12	✓												
13		✓											
14	✓											✓	
15	✓					✓							✓
16		✓											
17		✓											
18	✓					✓							
	10	7	1	1	1	4	1	2	1	1	1	1	1

Concept matrices

Question 16: What, in your view, are the major causes for delays in arbitration proceedings?

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about conflict from respondents with the KwaZulu-Natal Education Department and Teacher Organisations.

Respondent	Unprepared ness of Teacher Organisations	Unprepared ness Of Employer	Difficulty in securing witnesses	Venues not Central	No Mandates by Employer	No Mandates by Teacher Organisations	Points of Ebi mine <sup>2</sup>	Adjournments	Do Not Know	Non Commitment of Department	Inefficiency of ELRC	Late Appointment of Commissioners	Errors on Dispute Forms	Frivolous Cases	Non compliance with Time frames	
1	✓	✓	✓	✓	✓											
2						✓	✓	✓								
3									✓							
4		✓						✓		✓						
5		✓						✓			✓					
6	✓	✓	✓					✓		✓		✓				
7		✓										✓	✓		✓	
8		✓										✓				✓
9												✓				
10	✓											✓				
11		✓					✓				✓	✓				
12	✓	✓	✓					✓	✓		✓					
13										✓				✓		
14								✓			✓			✓		✓
15			✓					✓				✓				
16			✓													
17			✓													
18							✓									
	4	8	6	1	1	1	3	7	2	3	4	7	2	3	3	

Question 16	Frequency Of used by organization	Dept. of Education	SADTU	APEK	NATU	SAOU	ELRC
Reasons for delays	Unprepared ness of Employer	0	6	1	0	0	1
	Late appointments of Commissioners	2	3	2	0	0	0
	Adjournments	1	4	1	0	0	1
	Difficulty to secure witnesses	2	0	0	0	0	1
	Unprepared ness by TO's	1	2	0	0	0	0
	Inefficiency of ELRC	1	3	1	0	0	0

Concept matrix

Question 17: What role does the teacher organisations presently play in arbitration proceedings?

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about the role of Teacher Organisations in arbitration proceedings

Response	Represent Members	Debate disputes	Negotiate settlements	Advise members	Research Cases & How Cases	Identify & call witnesses
1	✓	✓	✓			
2	✓	✓		✓		
3				✓		
4	✓		✓	✓	✓	
5	✓				✓	✓
6	✓			✓	✓	✓
7	✓	✓				
8	✓	✓				
9	✓					
10	✓				✓	
11	✓	✓		✓		
12	✓					
13	✓					
14	✓	✓	✓			
15	✓					
16	✓		✓			
17	✓					
18	✓					
	17	6	4	5	4	2

Concept matrices

Question 18: *What role does the employer presently play in arbitration proceedings?*

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher about the role of KwaZulu-Natal Education Department as employer in arbitration proceedings.

Respondent	Disclose of information	Represent the DoE	Implement the Arbitration Awards	Arrange availability of witnesses	Arrange and secure venues for arbitration	Respondent to disputes	Delays the process	Do not know	Frustrate the process	Defend their Blunders	Defend Political & other appointments	Prepare and Call witnesses on their behalf
1	✓	✓	✓	✓	✓							
2						✓	✓					
3								✓				
4									✓	✓	✓	
5		✓							✓			✓
6		✓				✓				✓	✓	
7		✓									✓	
8		✓										
9		✓				✓						
10		✓				✓						✓
11						✓				✓		
12						✓						
13		✓					✓		✓			
14						✓						
15		✓				✓						
16		✓										
17						✓						
18		✓										
	1	11	1	1	1	9	2	1	3	2	4	2

Concept matrices

**Question 19: Do you have any recommendations for improving arbitration procedures?**

In the concept matrix below, I present correlations between the various responses to my interview questions to do an increasing fine grained analysis. An analysis of the matrix reveals aspects that can inform the researcher on recommendations to improve arbitration procedures.

Respondent	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Yes	✓								✓									
No		✓		✓					✓	✓	✓		✓	✓		✓		
Do Not Know			✓				✓											✓
Register & Administer Disputes Provincially	✓				✓	✓									✓		✓	5
Increase Funding to Provincial ELRC	✓																	1
Employ Support Staff At Provincial Chamber	✓			✓	✓													3
Compulsory Pre- Arbitration	✓											✓					✓	3
Commissioners to play more meaningful Role	✓											✓				✓		3
Role On arbitration & Unresolved Disputes Provincial ELRC to Advisory	✓																	1
Combine Conciliation & Arbitration so that Parties be prepared for both aspects	✓											✓					✓	3
ELRC Advocacy for resolution at grassroots and not management level	✓																	1
Honour & Implement Awards					✓													1
Fines For petty delays or adjournments						✓							✓					2
Stipulate Time frames							✓					✓						2
Train officials													✓					3
									Amendments are being made at National ELRC to improve Arbitration Procedures. Contact National Secretary									

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