

PRESENTATION

THE FUTURE OF COLLECTIVE BARGAINING



correctional services

Department:
Correctional Services
REPUBLIC OF SOUTH AFRICA



Introduction

- ❑ Programme Director, Minister of the DPSA, ILO Director, Head of Department DPSA, CCMA Director, PSCBC Chair, organized labour from various sectors, honourable guests; my address is based on the assumption that everyone in attendance is familiar with the finer details of collective bargaining and what it entails.
- ❑ Ladies and gentleman, if organizational rights and collective bargaining rights, the right to strike and the freedom of association are enshrined in the Constitution of the Republic , why then ponder about the future of collective bargaining ?
- ❑ Is there a need to radically change the approach to collective bargaining ?,
OR,

Future Of Collective Bargaining..

- ❑ Does the topic perhaps suggest that collective bargaining as a process is on the decline in South Africa and that sooner or later it will be extinct?
- ❑ If the view is sustainable, it poses an indictment on all role players to roll up their sleeves and work hard at improving the state of collective bargaining & social dialogue in South Africa.
- ❑ The aforementioned view – that collective bargaining is on the decline – is informed by collective bargaining trends highlighted below which were identified by Holtzhausen (2012) and Godfrey, Maree, Du Toit & Theron (2010) respectively, in relation to the state of bargaining councils in South Africa:

Holtzhausen postulates the following view:

- ☐ that globally, the membership and power of trade unions is on the decline.
- ☐ that membership of employers' organisations is declining. There is a marked reduction of the dependence of such organisations on the services associated with collective bargaining.
- ☐ that collective bargaining as a mechanism to determine wages and conditions of service is on the decline with a steady move towards the individual contract.
- ☐ that where collective bargaining does take place, it is conducted at a lower level.
- ☐ The level of detail contained in the agreements of national and industry is decreasing.

Du Toit et al echo the same sentiments:

- ☐ That collective bargaining is not in a healthy state despite the structures created by the Labour Relations Act 66 / 1995 (hereafter LRA).
- ☐ That Labour law makes no provision for any legally enforceable duty to bargain and as such plays a limited role in supporting collective bargaining.
- ☐ That the focus on sectoral bargaining is too narrow and not sensitive to market needs.
- ☐ That the institutions of collective bargaining need to have greater inclusivity of those who are marginalised from the formal structures.

In similar vein, Samuel (2013) made the following observation:

- ❑ “The propensity for workers in South Africa to undertake unprocedural industrial action has assumed a worrisome dimension in recent years... The emerging evidence suggests a radical departure by workers from the established collective bargaining and labour dispute resolution procedure stipulated by the LRA
- ❑ The current trend is for workers to disregard requirements of the labour legislation, and to breach provisions of existing collective agreements duly executed by elected labour union officials by embarking on wildcat strike actions in the process employing violence, arson, intimidation and threats in order to force employers to accede to their demands. These unconventional collective bargaining and dispute resolution mechanisms ‘invented’ by workers portend grave danger for a peaceful and harmonious industrial relations practice in the country.”

Is this a Fact ??

Future Of Collective Bargaining..

While there is, arguably, merit in the observations made by the above – mentioned authorities regarding the state of collective bargaining in South Africa, it is proper and fitting for me at this stage to highlight that not all is doom and gloom insofar as collective bargaining in South Africa is concerned!

The adoption of the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (hereafter Code) (Government Notice R 1396) dated 12 December 2018 which came into effect on 19 December 2018 heralds a new era and / or culture of collective bargaining in South Africa.

How?

To appreciate the significance and values of the Code, it is important to briefly outline the challenges that characterised collective bargaining in South Africa ere the adoption of the Code.

Future Of Collective Bargaining..

It is my submission that the challenges are still rife and are inextricably interwoven with South Africa's collective bargaining regime to the extent that it would be foolhardy for us to assume that such challenges will simply vanish with the adoption and introduction of the Code. The Code provides a regulatory framework within and in terms of which, a concerted effort by all role players may be made to address challenges such as ;

- ☐ Lengthy negotiations
- ☐ Lack of power
- ☐ Diminishing value in centralised bargaining
- ☐ Insecurity
- ☐ Limited resources
- ☐ Lack of capacity
- ☐ Economic instability

Challenges

- ☐ Frustration
- ☐ Ineffective communication
- ☐ Intra / inter – group trade union conflict
- ☐ The memory of past negotiations
- ☐ Positional approach to bargaining
- ☐ Blurred lines between bargaining structures and other processes to achieve goals
- ☐ Mistrust between parties
- ☐ Political change and instability
- ☐ Shifting power dynamics between unions
- ☐ Violence and intimidation
- ☐ Blurred lines between the employer and the union
- ☐ Uncertainty and inconsistency of the process
- ☐ Strained relations
- ☐ Striking an equilibrium between economic development and social justice

Objectives of the Code

The Code outlines the following objectives in clause 3 (1):

- To strengthen and promote orderly bargaining by-
 - (i) Promoting trust and mutual understanding and constructive engagement.
 - (ii) Promoting the maximum involvement of workers and worker representatives in negotiations.
- Recognising the importance of workplace democracy and dialogue and promoting employee participation in decision – making in the workplace, etc

Development and support for negotiators

Clause 8(1) to (4) of the Code makes provision for the development and support to be given to negotiators while clause 9(1) to (6) of the Code stipulates measures to be taken and / or complied with to prepare for negotiations.

Disclosure of information . (exceptions to disclosure are catered for also).

Clause 13 of the Code provides for the disclosure (by the employer party) of the credible and relevant information to any trade union with which the employer party negotiates. Disclosure of information is:

Limitation of rights

Clause 16 (2) of the Code provides that like all rights, the right to engage in collective bargaining , including the employer's recourse exercise economic power and the employees' right to strike may be limited by legislation provided that such limitation is reasonable and justifiable.

In this regard, I would like to refer the house to Numsa obo Khanyile Nganezi & Others v Dunlop Mixing & Technical Services (Pty) Ltd & Others [2019] ZACC

I submit that an integrated approach to collective bargaining is required. Such an integrated approach entails:

- ☐ The appointment of facilitators and negotiators.
- ☐ Development of training courses by recognised and accredited training institutions to train negotiators and facilitators in collective bargaining and
- ☐ Making the successful completion of such training course (-s)a prerequisite to being a negotiator and/or a facilitator.

Conclusion

In conclusion, allow me, Programme Director, to highlight a few areas of focus that the Code places heavy emphasis on pursuant to the new dispensation which I advocate that the Code evinces concerning collective bargaining in South Africa.

- ☐ That collective bargaining is a multi-layered mechanism that involves people, process (-es) and conflict / problems / challenges in the employment environment / sphere.
- ☐ That conflict in the employment environment is inevitable and good. What is important is the management of such conflict.
- ☐ That the employees' right to strike and the employers' right to lockout should be used as a last resort as a deadlock breaking mechanism and not as a primary factor to sway negotiations in a particular direction which is probably favourable to the one party and prejudicial to the other. Parties should forge or strive for a win – win situation to the challenge at hand.

Conclusion cont..

That parties should engage with a view of addressing the following questions that cannot be wished away since they are inextricably interwoven with the collective bargaining mechanism or process:

- I. Have the needs of the parties been identified with?
- II. Are deals being clinched at the expense of effective negotiations?
- III. Are deals being achieved at the expense of managing relationships ?
- IV. Are deals being achieved at the expense of developing collective bargaining processes?

Conclusion Cont..

- ❑ That parties should be wary of fixed mandates and / or budgets. Over – emphasis on the above variables reduces confidence in collective bargaining and promotes positional bargaining.
- ❑ That a strategic action plan with an accompanying enforcement and compliance model should be developed and rolled out to support the collective bargaining process.
- ❑ That a working committee and / task team should be established and be clothed with the necessary authority or muscle to manage the strategic plan and ensure compliance.

Conclusion Cont..

- ❑ That regular audits into the effectiveness or otherwise of the collective bargaining process should be conducted.
- ❑ That an integrated training & development plan that is linked to the strategic action plan and the accompanying enforcement and
- ❑ compliance model should be devised to enhance the skills and knowledge of negotiators and facilitators and their respective constituents.

Conclusion Cont..

- ❑ It is my respectful submission that collective bargaining as a process has a place in South Africa and that armed with the Code, the process will be a force to be reckoned with in the not distant future.
- ❑ It is my further submission that the benefits that will be derived from the implementation of and adherence to the Code far outweigh the views espoused by those who subscribe to another school of thought – that collective bargaining is on the decline and will soon be a defunct process - never to be heard of.
- ❑ Thank you Programme Director for affording me an opportunity to deliver a keynote address on the future of collective bargaining in South Africa.

Sources

- ❑ PS Nel et al (2016), South African Employment Relations Theory & Practice
- ❑ A Van Niekerk et al, 4ed (2017), Law @ work
- ❑ Code of Good Practice on Collective Bargaining, Industrial Action & Picketing (2018)
- ❑ E Patelia – Establishing a new culture of collective bargaining (Aug 2019):
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THANK YOU