

Power Struggle between Government and the Teacher Unions in South Africa

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Abstract

The article under the title 'Power Struggle between the Government and the Teacher Unions in South Africa in the 2007 and 2010 Salary Negotiations sets out to show, inter alia, that there can be no doubt that the intention of the legislators and the policy makers was that the laws governing labour relationships between employers and employees should be harmonious so that conflict can be minimized in the places of work. After 17 years of freedom South African schools are still experiencing disruptions as a result of the intertwined nature of politics, economics and education. The status of education features aspects such as the underperformance of the education system, abusive and violent learners, incompetent officials, unprofessional behaviors and inadequate resources. The opportunities for participation of educators in decision-making via their union representatives are weakened by the government's strong central control of power and decision making approach. Representative democracy is more emphasized by government at the expense of participative and direct democracy. The researchers argue that the conflict (2007 and 2010 salary negotiations) came as a result of economic discrimination of the workforce and not as a result of politics as alleged by government representatives and the media/newspapers. The article argues the issue of power struggle between government and union negotiators and comes to the conclusion that the status of public education has declined, poverty has increased and political tactics have been used to blur the real problematic issues in the country during the 16 years of freedom. The researchers are of the opinion that the government and the unions undermined the process of negotiations and either one or both of the parties negotiated in bad faith and undermined our fragile democracy. The parties did South Africa a disservice by negotiating for such a long period of time. This conclusion is followed by a number of recommendations, namely that, Educators' affairs should be separated from the Public Service and Administration Ministry so that accountability should be vested with the Minister of Education. The two centers of power (Ministry of Public Service and Administration and the Ministry of Education) should be corrected if we need quality education in South African schools; there should be a restriction in promoting the ideals of the market economy outside the realm of business; the advice Mahlangu and Pitsoe propose is for the government to abandon the economic theory of the invisible hand (someone – Minister of Public Service and Administration not directly involved with a sector but taking decision for a sector (Department of Basic Education) and develop a theory of social and political planning

Keywords: power struggle, teacher unions, conflict, crisis, salary, negotiations

INTRODUCTION

In most organizations, conflicts increase as employees assert their demands for an increased share in organizational rewards, such as position, acknowledgement, appreciation, monetary benefits and independence. Conflict situations arise for a number of reasons, namely: people have different status; different ideological and philosophical outlooks; different styles, principles, values, beliefs; see things differently because of differences in understanding and viewpoint; different thinking styles; people are concerned with fear, force, fairness or funds (<http://www.fao.org/docrep/7504e/w7504e07.htm>). This article argues that conflict is likely to occur where there are differences of opinion

between two contesting parties. Teacher unions are not uniform in their goals, abilities, or successes; indeed, their strength lies in their ability to respond to changing conditions, to recognize gaps and to invent new solutions, and in their two-way relationships with their teacher-members and policy makers (Bascia, 2005:607). They also serve a corrective function, a reality check when policy and practice lead to reduced support for teacher quality.

Prior to 1994 Parliament could make any law it wished and no person or institution (including the courts) could challenge the laws of Parliament (Currie & de Waal, 2005, 3). On 27 April 1994 the franchise and associated political and civil rights

were accorded to all citizens irrespective of their race, creed, colour, gender, sex, religion, belief, and opinion. Now South Africa is governed by the following basic principles: constitutionalism, the rule of law, democracy and accountability, separation of powers, checks and balances, co-operative government and devolution of power. The principles are all justifiable in the sense that any law or conduct inconsistent with them may be invalid (Currie et al 2005, 7)

According to section 29 (1) of the Constitution everyone has the right-

To a basic education including an adult basic education: and

To further education, which the state, through reasonable measures must make progressively available and accessible.

In terms of section 29 (3) everyone has the right to establish and maintain, at their own expense, independent educational institutions that-Do not discriminate on the basis of race).

Legal frameworks determine whether collective bargaining is permitted and by what terms it will be carried out. Teacher unions increasingly work strategically with others in the educational system to not only initiate but also to sustain coherent and comprehensive reform. Beyond their capacity for immediate response and support for daily practice, teacher organizations appear to serve as test-beds for certain kinds of innovations that might take years of planning and strategic work to come to fruition (Bascia, 2005:598-601).

BACKGROUND

This article focuses on the 2007 and 2010 salary negotiations between the government and the teacher unions. Schools and hospitals have been disrupted by strikers from both the public education and health sectors for the first time in during the thirteenth and sixteenth years to an extent never seen before. The 2007 and 2010 salary negotiations were one of the disruptive and violent in nature ever in the democratic South Africa since 1994.

According to the Constitution of the Republic of South Africa, No. 108 of 1996, section 33(1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair, also (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons for actions taken. In terms of section 23(1) everyone has the right to fair labour practices. The right to lawful just administrative action comes into action when someone's rights or interests are infringed upon by another person. The equality clause section 9(1) states that everyone is equal before the law and also affirms the democratic values of equality and freedom of all. The Bill of Rights

applies to all law irrespective of whether it is of legislative, executive or judicial in nature. It is disheartening, therefore, to find that the government and teacher unions in practice did not follow the simple and straightforward dispute resolution procedures (conciliation, mediation and arbitration) as they were intended to be used.

In order for conciliation, mediation and arbitration processes to be seen to be fair and just, conciliators and arbitrators must: (a) Act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of their functions; (b) Conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest; (c) Not solicit appointments for themselves. This shall not however preclude conciliators and arbitrators from indicating a willingness to serve in any capacity; (d) Accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment; (e) Avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias; (f) Not influence any of the parties in dispute by improper means, including gifts or other inducements; (g) support sound labour relations in the education sector (Brunton & Associates (ed), 2003:f-23).

Education In Crisis

The following recitation by the Minister of Education in presenting the 2007/2008 budget speech informs the nation and describes the status of education in its 13th year of democracy.

"The levels of underperformance in our education system are unacceptably high and an unjust subversion of the historic promise of freedom and democracy". "We seem to tolerate the rights of children who are abused, violent and abusive...we tolerate parents who do not care to support their children, who do not care to support their schools, who fail in their duties as parents". "We tolerate public officials who are not up to the task of administrative and professional support, who leave work early, who fail to pay subsidies to schools on time and who do not yet reflect the objectives and principles of Batho Pele (People first)". "We also tolerate mediocrity in the teaching force. We tolerate too much that is unprofessional". "We tolerate late-coming, and little sometimes no teaching, constant underperformance and poor academic success". "The defense of mediocrity is supported by unjustifiable arguments. Some cite apartheid. I (Minister of Education) acknowledge that the legacy of apartheid continues to affect us (SA) but it no longer serves to explain continued failures of our part". "Others cite inadequate resources. Yet this is no longer a

persuasive argument.'

Power

The power struggle between teacher unions and governments is not new. Bascia (2005:30) is of the view that in the U.S, public relations between policy makers and teachers' organizations seems to have fallen to an all-time low as the federal Secretary of Education called one of the two national teachers' unions a "terrorist organization". McDonnell and Pascal in Bascia, 2005:597 suggested that unions could take three possible stances toward reform: they could oppose or resist policies "that challenged their traditional interests, adapt to this new set of circumstances and accommodate various reform options espoused by others, or play an active role in shaping new approaches to teacher policy" (McDonnell and Pascal, 1988:16).

The Minister of Education (National) also said that Provincial Education Departments are not implementing government policies and programmes in schools. The Minister asked for more power to control how the provinces spend their budgets (City Press, 3 June 2007, 21). The state of educational affairs in the 13th year of democracy tempted the Minister to act *ultra vires* (beyond the power given) to control Provincial Departments. The state of education in South Africa had then reached a crisis state where there were strike actions in almost all public schools. The crisis was brought about by symbolism (whereby a gloomy picture is painted and the state of education is bleak).

Educators are challenged by the economic discrimination they perceive to be unfair and the good prosperous picture painted by politicians to enhance the image of the country. The salary strikes (during the 2007 and 2010 salary negotiations) were a testimony to what the researcher views as economic discrimination and challenges of life which also impacted negatively on education in its 13th and 16th year of democracy. Interest rates hike, fuel prices and management of labour relations have affected education negatively in recent years of South Africa's freedom. Resultant failing relationships have dented the image of education in South Africa. The successes of the world cup are overshadowed by the strikes and the failure of the negotiators in reaching amicable agreements.

The problem with which education is faced is the dual control role of the Minister of Public Service and Administration and the Minister of Education. This creates confusion pertaining to who is responsible for educational control and service. The Constitution requires the government to respect the principle of democracy. Since the French and American revolutions it had been accepted that no person or institution has a divine right to govern

others. It follows from this that any government decision such as salary increases could only be legitimate in so far as it rests on the consent of the governed (Unions representing educators) (Currie & de Waal 2005:13).

The conflict that existed between the Minister of Public Services and Administration with the Unions was a sign that law makers did not understand the laws they promulgated. The rule of law means more than the value - neutral principle of legality. It also has implications for the content of law and government conduct. In this regard it had both procedural and substantive components. The procedural component forbids arbitrary decision making. That is why, for example, in the salary negotiations between government and the Unions, the rule of law was violated when one Minister was given the power to decide on behalf of all the public servants (including educators) pertaining to how much increase public servants may receive.

The Constitution of South Africa recognizes three forms of democracy: representative democracy, participatory democracy and direct democracy. The Constitution is primarily aimed at establishing and safeguarding a representative democracy. The anchor of this representative democracy is found in the political rights entrenched in the Bill of Rights (Currie & de Waal 2005: 14-15). The section 33 right to procedurally fair administrative action requires that persons are given a hearing before decisions are taken affecting their rights. Outside the area of administrative action, the problem is that there is no specific constitutional obligation on the executive to consult affected parties before it makes decisions. That is why there is a stand-off between the Minister of Public Services and Administration with the Teacher Unions. The common law rules of natural justice are crystallized in two maxims: *audi alteram partem* (persons affected by a decision should be given a fair hearing by the decision-maker prior to the making of the decision) and *nemo iudex in sua causa* (the decision-maker must be reasonably perceived to be impartial) (Currie and de Waal 2005, 663)

Poverty

Township schools bear the brunt of the disruptions caused by any wage strike. According to Max du Preez in *The Star* dated 14 June 2007:16, the most depressing feature of what has been going on during the strike is the utter lack of leadership from political, labour, civic and religious leaders. The state of the township schools (education) is South Africa's worst crisis when matric results are released. The crisis is that some unions and some striking workers are committing gross human rights violations, are disregarding the Constitution and are challenging the authority of the state itself in the name of legitimate

industrial action. On the other hand, the state blunders by disregarding the provisions in the Labour Relations Act, 1995. For example, the dismissal of nurses without following procedurally fair procedures. The Constitution in section 23 asserts that everyone has the right to fair labour practices. Section 23 of the Constitution also protects the right of employees to strike (Basson, Christianson, Garbers, le Roux, Mischke & Strydom, 2005:11)

Employees who strike will normally be guilty of a serious breach of contract in that they will be refusing to comply with their contractual duty to do the work which they agreed to do. In terms of common law principles an employer will therefore be entitled to summarily dismiss striking workers as the Minister of Public Services and Administration did with the nurses. The rationale of protecting strikers against dismissal was explained by the Labour Appeal Court in *Black Allied Workers Union and others V Prestige Hotels CC t/a Blue Waters Hotel* (1993) 14 ILJ 963 (LAC) at 972.

Democracy

Teacher unions do not function in a vacuum. They work within the larger educational milieu. No single organization possesses either the intellectual or resource capacity to cover all the bases (Bascia 2005:605). In terms of section 18 of the Constitution of the Republic of South Africa, No,108 of 1996, everyone has the right to freedom of association, which means that educators and all other workers have the freedom to choose a trade union to belong to (Joubert & Prinsloo 2009:187). With regard to the Public Service, section 197 of the Constitution provides that-

- ❖ Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.
- ❖ The terms and conditions of employment in the public service must be regulated by national legislation.
- ❖ No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.
- ❖ Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of employees within a framework of uniform norms and standards applying to the public service.
- ❖ The Constitution requires the government to respect the principle of democracy. It follows from this that government's decisions can only be legitimate in so far as it rests on the consent of the governed. The principle of democracy means that citizens

are entitled to lobby and to pressurize the government to give effect to their rights (Currie & de Waal 2005, 10-19).

The threat of dismissal by the Ministers of Public Service and Administration together with the Minister of Health seriously impairs the right of employees to strike. Section 67 (4) of the Labour Relations Act, 1995 specifically provides that an employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike. The dismissal of nurses needs to be judged under the category of an essential service (not allowed striking because their services are key to the protection of life). An employer is permitted to dismiss employees who, during a protected strike, commit acts of misconduct such as assault, intimidation and malicious damage to property. An employer who decides to dismiss strikers under these circumstances must ensure that the dismissal is fair and in accordance with the statutory requirements for a fair dismissal for misconduct. In *CEPPWAWU and others v Metrofile (Pty) Ltd*, the Labour Appeal Court held that an employer need not wait until the end of a protected strike before it may institute a disciplinary enquiry for acts of misconduct during a protected strike: The right to be afforded a fair hearing before one's dismissal is indeed an integral part of South African law (Basson et al 2005:307 – 308).

Circumstances surrounding the strike action may indicate that it is unfair to dismiss strikers even where the strike is unprotected in terms of the Labour Relations Act,1995. Item 6 of the Code of Good Practice: Dismissal requires that the substantive fairness of a dismissal of strikers who participated in an unprotected strike must be evaluated in the light of the facts of the case, attempts made to comply and whether the strike was in response to unjustified conduct by the employer. For example, in this case scenario the Minister of Public Service and Administration prolonged the salary negotiation process for a period of eight months and this appears as a lack of commitment and poor negotiation strategy on the part of the government.

In law, before effecting a dismissal an employer must follow the following steps:

- (a) To make contact with the union representing the affected employees;
- (b) To issue an ultimatum – the ultimatum must be communicated to the strikers in writing;
- (c) To be procedurally fair – conduct a disciplinary hearing (Basson et al 2005:314 – 316).

In the 2007 salary negotiations in South Africa, the Ministers of Public Service and Administration and Health undermined the labour law. This was done to

illustrate the fact that the government wielded more power than the teacher unions. The strike was hurting the poor and the unfortunate most. The Ministers and the Unions may be politicking but millions of children of desperately poor families rely on school feeding schemes for sufficient nutrition everyday of each week. These children were starving because schools were not functioning due to the stand-off between the government and the unions. Prior to the dawn of the new democratic state people resorted to violence and intimidation to show resistance towards the apartheid government which was frustrating them with discriminatory and repressive laws and now that still continues.

In 2007 and 2010 the legitimate and democratically elected government was slow to respond to the pressing economic pressures and discrimination her people perceived to be happening. People tend to flout rules and laws of the country because of anger and frustrations they experienced. The golden thread running through the Constitution, the provisions aiming at a caring, open and tolerant country with respect for human rights and dignity, was ignored as soon as the people got angry and impatient (The Star 14 July 2007:16).

The 2007 and 2010 Salary negotiations passed through stages, namely:

Pre-Problem Stage

A harmful situation existed but had not yet attracted the attention of lawmakers, journalists, or the public. For example, government negotiators and unions negotiated for more than eight months and the public was only informed when problems became evident.

Alarmed Discovery Stage

A dramatic event created a large public support for solving the problem. For example, all unions representing public servants joined the salary strike for the first time in the history of the democratic South Africa since 1994.

Official Recognition of Problem Stage

Established leadership became involved. For example, unions and government representatives started negotiations and wanted an amicable solution that would be acceptable to their principals and the members.

Gradual Decline in Public Interest Stage

The public became bored with the problem, media attention faded, and the public lost interest. For example, the public was informed by the Minister of Public Service and Administration via a parliamentary briefing that an agreement was reached in the salary negotiations whereas it was not reached. The public viewed the Minister's speech as misleading the public and parliament because the unions responded negatively immediately.

Active Dissatisfaction In Groups Stage

The groups who made the initial claims expressed

dissatisfaction regarding how the situation was being handled. For example, union members started to harass and to threaten those members who were not on strike while those who were on strike were threatened with dismissal by the Department of Health. Teachers were also threatened with no work no pay principle.

Post-Problem Stage

In spite of the fact that only limited improvement had been achieved, the issue at hand was replaced by new problems (Zetterberg, 2002, xxxv). For example, 51% of the total number of unions accepted the government's salary offer of 7,5%, the other COSATU(Congress of the South African Trade Unions) affiliates refused to sign the offer, especially SADTU (South African Democratic Teachers Union) members who wanted their issue to be decided in the ELRC (Education Labour Relations Council).

The knowledge of the above- mentioned stages may be helpful in interpreting problems and conflicts, not only within realms, but also between realms and between total societies (problems arise within and outside of organizations) (Ibid, 2002, xxx).

Koppich 2005:90) is of the view that teacher unions are concerned only with enhancing only the compensation packages of those whom they represent. In this regard, a note should be made of the fact that the founding provisions of the Constitution of the RSA, 1996, provide that the Republic of South Africa is one, sovereign, democratic state founded on a number of values, such as the supremacy of the Constitution and the rule of law. Since this Constitution is the supreme law of the Republic of South Africa, any law inconsistent with it is invalid and any obligations imposed by it must be fulfilled (Currie & de Waal, 2005:12)

It is to be noted that the rule of law requires-Law, conduct, and the fulfillment of obligations consistent with the Constitution, to be valid. With regard to the Public Service, section 2 of the Public Service Act, Proc. 103 of 1994, inter alia, with regard to the application of the Act, provides that-

Except in so far as this section provides otherwise and except where it is inconsistent with the context or clearly inappropriate, the provisions of this Act shall apply to or in respect of employees whether they are employed within or outside the Republic, and in respect of persons who were employed in the public service or who are to be employed in the public service. Where members of the services, educators or members of the Intelligence Services are not excluded from the provisions of this Act, those provisions shall, subject to subsection (2A), apply only in so far as they are not contrary to the laws governing their employment.

(2A) (a) Subject to the Labour Relations Act, and any collective agreement, the determination of any conditions of service for-

(i) employees in general or a particular category in terms of this Act; and

(ii) educators or members of the services in general or for a particular category in terms of the laws governing their employment,

shall be made with the concurrence of a committee of Ministers.

(b) For the purposes of paragraph (a)-

(i) 'conditions of service' means annual salary adjustments, salary scales or levels, performance bonuses, pay incentives or pension benefits; and

(ii) the committee of Ministers shall consist of the Minister, the Minister of Finance and the Ministers responsible for the educators and the members of the services and such other Ministers as the Cabinet may designate (if any), and shall function the same as a committee of the Cabinet.

(2B) The provisions of this Act regarding the conditions of service and other employment practices of a head of department only apply to a head of department appointed in terms of the Constitution to the extent that the subject-matter of such provisions are not provided for in any other law governing his or her employment or his or her contract of employment.

This legal structure therefore applies to: employees in general or a particular category in terms of this Act; and educators or members of the public services in general or for a particular category in terms of the laws governing their employment.

However, there is more to it. The section also inserts the following important proviso, namely:

Subject to the Labour Relations Act and any collective agreement, the determination of any conditions of service for-....

And 'conditions of service' - (conditions of service) means annual salary adjustments, salary scales or levels, performance bonuses, pay incentives or pension benefits.

Labour Relations Act, Act No.66 of 1995 assists in regulating the application of conditions of service for public servants and others. Schedule 1 to the Act deals with the establishment of bargaining councils for the public service. Item 2 of Schedule 1, deals with the establishment of the Public Service Coordinating Bargaining Council of which the founding parties were the Education Labour Relations Council, the National Negotiating Forum and the central chamber of the Public Service Bargaining Council. Item 3 of Schedule 1 deals with the establishment of bargaining councils in the various sectors of employment, and for this purpose the departmental and provincial chambers of the

Public Service Bargaining Council are deemed to be bargaining councils established in terms of section 37 (3) (a) of this Act; the Education Labour Relations Council is deemed to be a bargaining council established in terms of section 37 (3) (b) of this Act, and (3) The National Negotiating Forum is deemed to be a bargaining council established for a sector designated in terms of section 37 (2).

With regard to the jurisdiction of the various bargaining councils, therefore section 37 of the LRA, inter alia, contains the following provisions:

(1) The Public Service Co-ordinating Bargaining Council may, in terms of its constitution and by resolution-

(a) Designate a sector of the public service for the establishment of a bargaining council; and

(b) vary the designation of, amalgamate or disestablish bargaining councils so established.

(2) A bargaining council for a sector designated in terms of subsection (1) (a) must be established in terms of the constitution of the Public Service Co-ordinating Bargaining Council.

(5) A bargaining council established in terms of subsection (2) has exclusive jurisdiction in respect of matters that are specific to that sector and in respect of which the State as employer in that sector, has the requisite authority to conclude collective agreements and resolve labour disputes.

Bargaining councils were set up to relieve the power struggle between Unions and the South African government. In the 2007 and 2010 salary negotiations bargaining councils did not fulfill their mandate as expected. As we have seen above, in terms of the Constitution, i.e. the rule of law, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. The Constitution itself deals with the Public Service. Bearing all of this in mind, one will have to consider whether the laws (including the Constitution) which lays the foundation for the structure of the public service, and the structure and jurisdiction of bargaining, is inconsistent with the Constitution and therefore invalid.

Against this background one can then proceed to argue the validity of the statement contained in the title of the article, namely:

The power struggle between the South African Government and the Teacher Unions in the 2007 and 2010 Salary Negotiations were searching for remedies for a social problem outside its social realm. There is no way in which a government could grow in continued serviceability to its people without a large and persuasive extension of planning and control to many areas now left to casual individuals calling themselves 'Union and government negotiators'

Life in a differentiated society like South Africa's differentiated public service, would be unbearable for a large number of people especially government employees under a Darwinist capitalism in which a market economy rules supreme and everything and everybody are measured in dollars and cents (Zetterberg 2002:xiv). It would also become equally unbearable if political rulers of a state decided everything and life was trapped in bureaucracy, even a bureaucracy legitimized by elections

CONCLUSION

There can be no doubt that the intention of the legislators and the policy makers was that the laws governing labour relationships between employers and employees should be harmonious so that conflict can be minimized in the places of work. South African schools are still experiencing disruptions as a result of the intertwined nature of politics, economics and education. The status of education features aspects such as the underperformance of the education system, abusive and violent learners, incompetent officials, and inadequate resources.

The opportunities for participation of educators in decision-making via their union representatives are weakened by the government's strong central control of power and decision making approach. The task of improving the state of affairs lies with both the government and the Unions

Representative democracy is more emphasized by government at the expense of participative and direct democracy. The researcher argues that the conflict (2007 and 2010 salary negotiations) came as a result of economic discrimination of the workforce and not as a result of politics as alleged by government representatives and the media\newspapers.

This article argues the issue and comes to the conclusion that-

- ❖ The status of public education has declined, poverty has increased and political tactics have been used to blur the real problematic issues in the country.
- ❖ The researcher is of the opinion that the government and the unions undermined the process of negotiations and either one or both of the parties negotiated in bad faith and undermined our fragile democracy. The parties did South Africa a disservice by negotiating for such a long period of time.

This conclusion is followed by a number of recommendations, namely that-

- ❖ Educators' affairs should be separated from the Public Service and Administration Ministry so that accountability should be vested with the Minister of Basic Education. The two centre of power (Ministry of Public

Service and Administration and the Ministry of Basic Education) must be corrected if we need quality education.

- ❖ There should be a restriction in promoting the ideals of the market economy when addressing the business of education.

The advice the researchers propose is for the South African Government to abandon the economic theory of the invisible hand (someone not directly involved with a sector but taking decision for that particular sector) and develop a theory of social and political planning where education is given a first preference over other issues.

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