**THE IMPACT OF LABOUR RELATIONS ACT (ACT 66 OF 1995) AT VISTA UNIVERSITY (MAMELODI CAMPUS) FROM THE YEAR 1981- 2004.**

**BY**

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**DEDICATION**

I dedicate this work to my parents Mr & Mrs Mabogoane. They have been my foundation and my inspiration. Their courage and guidance will, forever, direct my way in life.

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**DECLARATION**

I declare that, **The impact of <u>Labour Relations Act</u> (Act 66 of 1995) at Vista University (Mamelodi campus) from the year 1981-2004,** is my own work, that any sources used, quoted have been indicated and acknowledged by means of complete reference and that my dissertation was not previously submitted for a degree at any other University.

**The impact of Labour Relations Act (Act 66 of 1995) at Vista University (Mamelodi campus) from the year 1981-2004**

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## Abstract

This study deals with the impact of Labour Relations Act (Act 66 of 1996) at Vista University (Mamelodi Campus) from the year 1981-2004. Vista University was an academic institution which was established in 1981 under the Vista University Act (Act 106 of 1981). The dissertation has convincingly argued that the management of Vista University needed to comply with the principles of the Labour Relations Act (Act 66 of 1995). The study has shown that the Act had a negative impact on the employee-management relationship.

The study proposes and recommends that the management should create a good labour relationship, manage conflict between employers and employees, maintain effective communication, and promote ethical behaviour and collective bargaining. The study, further, notes that principles of conflict resolution subjected to the Labour Relations Act (Act 66 of 1995) should be applied in a fair way and the techniques for attainment of conflict such as avoidance, accommodation be applied to resolve a situation.

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**CHAPTER ONE**

**A BRIEF EXPOSURE OF VISTA UNIVERSITY'S HUMAN RESOURCE DEPARTMENT AND ITS LABOUR RELATIONS SECTION (PRE-1994 AND POST-1994).**

**1.1     Introduction**

This chapter provides a brief overview of Vista University's Human Resource Department and the establishment of its Labour Relations Section (pre-1994 and the post-1994). The pre-1994 phase will describe the situation within the Human Resource Department before 1994 and the post-1994 period will describe the situation after 1994. This chapter will also outline the successes and the failures of the Department. The need for the Department's existence will also be provided. Furthermore, a comparative analysis of the Human Resource Departments' of other institutions will be made and the means to improve the standard of Vista University's Human Resource Department will be discussed. Finally, the establishment of a Labour Relations Office as a section within the Department will be discussed.

**1.2     Vista University's Human Resource Department pre-1994 and post-1994**

According to Gerber *et al*  (1987:10) the Personnel Administrative Department is that specialised division of a large organization's policies pertaining to the planning of structures, recruitment, selection and placement of successful employees and to procedures for resolving disputes and is so applied at Vista University.  In 1982 when Vista University was established, a number of departments were created. One of them was the Personnel Administrative Department, which is presently called the Human Resource Department.

In 1994, after the first democratic government in South Africa came about, a transformation process was started at Vista University and affected the pre-1994 Human Resource Department. The appointment of the Director of Human Resource in 1996 brought changes in the focus of the Department. The Director realised the need to empower the Department by considering functions and duties such as job analysis, attitude survey, and employee services including the employee assistance plan and outplacement services.

**1.3    Successes and failures of the Vista University's human resource department**

The pre-1994 structure of the Human Resource Department consisted of two categories: the higher authorities and lower authorities. The higher authorities, viz the Director, Secretary, Deputy-Director and Assistant Deputy-Director, were responsible for sensitive tasks such as determining the policies and procedures, decision-making in the Department, and the practice of labour relations. However, they lacked experience regarding the promotion of labour relations.

The lower authorities were officers referred to as the data typist, academic administration officer, filing clerk, and officer responsible for pension, medical and death claims. The service rendering process was ineffective because as a result of poor training the above-mentioned officers were lacking the capacity to share skills and acquire knowledge of different duties to be performed by the Human Resource Practitioners.

Since 1994 the Department seemed incompetent in performing its duties such as administering the policies of the institution effectively, promoting an effective management-employee relationship, and ensuring proper control among its staff members performing their day-to-day activities. There was also unethical behaviour such as nepotism practiced by staff members and their authorities. The majority of the

staff members within the Department were not held responsible for the actions and duties assigned to them by their supervisors. The reason for this was poor co-ordination between the employees and their authorities (Informal dialogue. Deputy Director, Human Recourses Department. 25 June 2003. Vista University).

Furthermore, Vista University employees experienced major problems regarding the operation of their Human Resource Department. The Department was unable to promote individual rights such as the freedom of speech as enshrined in the <u>Constitution of the Republic of South Africa Act</u> (Act 108 of 1996). The majority of the employees were unable to raise their concerns and expectations due to the fear of being victimised by the senior authorities. Employees were denied access to relevant information and the senior authorities made most decisions, without proper consultation with their employees. This implies that there was poor participation in the decision-making process, and a poor employee-management relationship. Few of the concerns raised by employees were actively heard (Informal dialogue. Deputy Director, Human Resource Department. 25 June 2003. Vista University).

After 1996 a number of Acts were introduced such as the <u>Equal Employment Opportunity Act</u> (Act 55 of 1998), which requires an institution to consider Affirmative Action to hire handicapped employees, but were not actively practised. Few, if any, of the staff members were handicapped. This does not mean no handicapped applicants applied for the positions advertised by the Human Resource Department, but that those who did were not appointed. Furthermore, gender equity was not practised as male and female employees were not equally treated. As a result of the former apartheid laws that also affected Vista University men and women did not receive equal salary even though they performed similar tasks. Interview responses reflected that men were getting higher salaries than women were.

By 1996 as the transformation process continued, the Vista University's Human Resource Department also had a few of successes. The Department had to be restructured and was categorized into three groups: the higher authority, viz, the Director, Deputy-Director and Secretary of the Department, Deputy-Director of Labour Relations and of Organisation Training and Development; middle authorities, viz, the Supervisor, Secretary for Organisation Development and Training, and of Labour Relations; and lower authorities that are referred to as Human Resource Practitioners.

The Department drafted policies and procedures to guide the University Management's thinking, and to help management to achieve human resource objectives such as assisting other functional managers in other departments to efficiently utilise and deploy important resources within the institution. The policies assisted in clarifying both acceptable and unacceptable behaviour as well as establishing the Department's position on employee behaviour, and to promote an effective employee-management relationship. Details of the policy and procedure manual of the Human Resource Department will be discussed later in the chapter in comparing it with that of other institutions.

## 1.4 The need for the Human Resource Department's existence

The major need for the Human Resource Department's existence is to ensure that the institution's human resources are used and managed as effectively as possible, and to promote effective labour policies. Its Human Resource Practitioners help through designing/drafting and implementing policies and programmes that will improve the institution's overall effectiveness. Other factors regarding the need for the Human Resource Department are given below.

### 1.4.1 Effect of the success of institutions

The Human Resource Department has a great effect on the financial success of an institution. Institutions wishing to remain competitive in today's rapidly changing global marketplace need to address the issue of achieving productivity through their employees. There are a number of avenues that the Human Resource Department of a successful rapidly growing institution can follow to solve problems and achieve success:

- Having Human Resource senior authorities report directly to the institution's management;
- Placing a major institution's emphasis on employee recruitment, selection and training;
- Using team-building and creating an environment of rapid decision-making at a lower level;
- Communicating key performance objectives through all programmes and linking them to goals at all levels;
- Including the Human Resource Planning as part of the management's strategic planning.

### 1.4.2 Human Resource Policies as a guide to the institution's management

The Human Resource Policies serve as a guide to the management's thinking, and help management to achieve the Human Resource's objectives. Policies also help when defining acceptable and unacceptable behaviour and in establishing the institution's position in handling issues. In order for such policies to be more effective, they should be in writing and communicated to all employees. Publishing Human Resource policy manuals may ensure that employees become familiar with such policies. Each manager should be provided with such a manual, which must include instructions to review the same manual

in detail. Updates of the manual can be posted on bulletin boards, and supervisors may be required to discuss policy revisions with their employees through departmental meetings. Lastly, a well written policy document can be used not only for orientating new employees to the workplace but also to set the difference between supervisor and subordinates (Carrell, Elbert, *et al*, 2000. 14).

**1.5    A comparative analysis of Vista University's Human Resource Department and that of the University of Pretoria.**

A comparison will be based on the Universitys' conditions of service, and their similarities and differences. Firstly, the similarities include clarification of terms such as Council, Calendar year, Senate, Statute, etc in order provide all employees with a clear understanding and to assist them in the effective conduct of business.

Secondly, it indicates the staff groupings in terms of appointments. It clearly indicates the conditions of appointment according to employee; permanently appointed employee, temporary-full time employee, contract appointed employee, and temporary part-time employee. These also include their benefits, pension and retirement funds, and Group life assurance and medical schemes. Thirdly, their rights and duties are also included such as the execution of official duties, outside work, the use of University property, the right to inventions and patents, and the right to participation in politics. Lastly, the conditions of service also contain issues related to leave, discipline, and termination of service and retirement for the purpose of assisting all employees in the effective conduct of business.

Differences include the University of Pretoria's conditions of service which do not indicate its Special Conditions and Regulations which entail the Vice-Chancellor's authority, execution of duties and lines of communication. It also does not discuss in detail the disciplinary codes

and grievance procedure. Furthermore, the retrenchment, long service awards, and relocation and transfer services were not clarified in detail.

Subsequently, the Department became successful with the establishment of other sections, namely: Organisation Training and Development which is responsible for developing and training its employees through workshops, and the Labour Relations Office responsible for maintaining a good relationship between Vista University Management and its employees.

**1.6    Strategies to improve the functioning of the Human Resource Department**

There appears to be a number of strategies that Vista University's Human Resource Department can apply in order to improve its standard of service rendering, such as fair employee-management relationship, and are as follows:

Attracting qualified employees and matching them to the jobs for which they are best suited will be important for the success of the Department. In the past, the Human Resource Practitioners were associated with performing the administrative functions of the Department such as handling employee benefits questions, recruiting, interviewing and hiring new personnel in accordance with the policies and requirements that were established in conjunction with top management. But today, the practitioners should juggle these tasks and increasingly consult with top executives regarding strategic planning. They should move from behind-the-scenes staff work and lead the Department to suggesting and challenging policies (www.bls.gov/oco's021.htm. April. 2003).

The Department must avoid measuring its success through attainment of jobs, but rather by its ability to help employees to remain in the world of work and climb the ladder to achieve solid self-sufficiency.

Furthermore, it must continue to believe that the best way to develop employment skills is through work experience and to expect employees to concentrate on efforts to make them part of the workforce. If the two co-operate, the Human Resource Department might develop support that will enable each individual to become and remain employed (www.nyc.gov/htm/hra/home.htm/ April. 2003).

A number of positions also need to be established for smooth operation of the Department and they include an Employment and Placement Officer, who should oversee the hiring of employees and the supervision of various employees; a recruitment Officer, to maintain contact with the community and who may have to travel extensively to other academic institutions to search for promising job applicants; Compensation, Benefits, and Job Analysis specialists to conduct programmes for employers and who may specialise in specific areas such as positions classifications or pensions. Furthermore, there should be Job Analysts who collect and examine detailed information about job duties to prepare job distributions. Lastly, there should be training and development officers and specialists to conduct and supervise training and development programmes for employees (www.bls.gov/oco/oco's021. html/. April 2003).

Maintaining employment security may serve as another strategy to improve or upgrade the standard of the Human Resource Department. The Department should try and introduce mechanisms for minimising issues such as retrenchments, should they happen. Maintaining stable employment levels is an important factor in sustaining employee morale and commitment to the university's goals. This has to do with the availability of effective long-term Human Resource policy planning and implementing such plans as required. The Human Resource planning process, and active participation of employees in their own development, may have much potential for achieving greater institution effectiveness (Horwitz. 1991: 129-130).

According to Torrington and Hall *et al* (2002; 27) the Department must consider the availability of new technologies because it gives the Human Resource Practitioners opportunities to develop fresh approaches to their work. They also require new thinking about change processes and the management of people in technologically specialised roles. Because the Human Resource senior authorities are faced with ethical dilemmas like nepotism, they must argue for justice and equality, but will not be more actively heard unless they put forward some convincing institutional cases.

The Department needs to effectively perform its own functions by consolidating its financial, physical and other resources to create conducive conditions for its personnel. Because the Human Resource functions within each institution are unique from one institution to the other, the activities included in the Human Resource Department will also vary from institution to institution. Among the activities that were mostly likely to be considered by Vista University's Human Resource Department are Compensation and Benefits issues such as insurance administration, wage and salary administration, unemployment compensation and flexible benefits accounts.

Senior authorities within the Human Resource Department must consider questions such as how should jobs be evaluated to determine their worth, are wages and salary levels competitive and fair when measured against the set standards of working conditions of both the <u>Labour Relations Act</u> (Act 66 of 1995) and <u>Basic Conditions Employment Act</u> (Act 75 of 1997), and lastly, if it is possible to create an incentive compensation system tied to performance.

The authorities must consider the Employee Services such as outplacement services, employee assistance plans, health and wellness programmes, and relocation services. The <u>Occupational Health and Safety Act</u> (Act 85 of 1993) must be considered since health and safety appear to be a newer area of concern to employees

today. Each year at the University accidents, injuries and occupational diseases costs billions of rands in medical expenses, equipment damages and production problems. Although much is being done to improve the workplace environment, there is still considerable room for improvement. This includes introducing programmes such as the wellness programme to help employees in identifying potential health risks through screening and testing, and to educate them about health risks such as high blood pressure, smoking, poor diet and stress (Carrell and Elbert *et al* 2000: 14).

Job analysis and design are very important because, for employees to perform satisfactorily, their skills, abilities and motions to perform the job must match such job requirements. A mismatch may lead to poor performance, absenteeism, employee turnover and other related problems. Through a job analysis process, the employee's skills and abilities to perform a specific job can be determined. Scientific management must be popularised because it encourages that jobs be designed to be simple and routine so that unskilled employees could be quickly trained to perform such work (Carrell and Elbert *et al* 2000. 14-15)

The need for Human Resource Assessment as a comprehensive review of all general functional areas related to Human Resource Management could also be applied as a strategy to improve the functioning of the Human Resource Department. The major purpose of the assessment will be to provide a baseline of current human resource practitioners, policies and procedures in order to develop improved processes and standards for eventual implementation and typical areas for review. This may include staff development, general Human Resource function administration, performance management, internal communications, employee records, maintenance, discipline, benefits and compensation (http://www.b2secure.com/hrs/services.htm. April 2003).

The assessment may be maintained through interviewing appropriate Human Resource Practitioners and management officials regarding specific policies, procedures, and practices related to human resource management. In addition, a thorough examination can be performed on all forms and manuals including personnel files used in the conduct of activities related to human resource management. Upon the completion of assessments, a thorough summary report should be prepared and presented in an executive briefing meeting scheduled with the University management. Every functional area of the Human Resource report may include a description of observations made during the assessment along with corresponding comments and recommendations. Because the assessment report is a powerful management instrument, it can be used to determine the priority needed for useful Human Resource Projects (http://www.b2secure.com/hrs/services.htm/. April 2003).

Outsourcing the University's Human Resource functions may also improve the Departmental Operational System. Fowel and Fowel (1996: 970) regard outsourcing as obtaining by contract from an outside source. This can be done in consideration of a number of advantages of outsourcing the Human Resource functions, which are as follows:

- no additional head counts
- no employment taxes
- no benefit expenses
- more payroll process
- improved employee morale and efficiencies
- no capital expenses
- no asset expenses
- lower worker compensation costs
- real time human resource reports made available
- less administration burden

- lower unemployment compensation ratings
- reduced cycle for employment and staffing
- greater employee job satisfaction

(http://www.b2secure.com/hrs/adv.htm. April. 2003).

## 1.7 Labour Relations Section

The establishment of an effective Labour Relations Section also served as another strategy to improve the functioning of the Human Resource Department.  Labour relations can be defined in terms of how certain individuals, groups and organisational forces determine decisions affecting the relation between employers and employees. The section played the role in reconciling the interests of both employers and employees. The establishment, duties, and the responsibility of this section at Vista University took place in two phases and are explained as follows.

## 1.7.1 Labour Relations (pre-1994)

When Vista University started to operate in 1982, it was the responsibility of the Director of the Human Resource Department to promote a good relationship between employees, existing unions and management. The situation at Vista University was different in that only a few unions existed and these did not have a loud enough voice to effectively and efficiently promote employee-management relationship (Informal dialogue. Senior Administrative Officer. Finance Department. 8 June 2003. Mamelodi).

The Union of Democratic Staff Association (UDUSA) was the existing recognized union at Vista University. Though UDUSA'S aims and goals were mainly to liberate and democratise universities in South Africa, it did attempt to create a good relationship between employees and management of Vista University. But due to oppressive conditions,

UDUSA failed to respect and promote its members' interests and to effectively promote employee-management relations. It was only towards the 1990's that UDUSA restructured itself and introduced new leadership and recruitment practices (Informal dialogue. Senior Administrative Officer. Finance Department. 8 June 2003. Mamelodi).

### 1.7.2  Labour Relations  (post-1994)

The year 1994 saw the first democratic government elected in South Africa, which brought new developments including the unionization of employees within their respective organizations. This process of unionisation also affected employees at Vista University and most employees then registered with unions, which represented their interests (Informal dialogue. Campus Registrar. 8 June 2003. Mamelodi).

The unions established included the National Tertiary Education Staff Union (NTESU), Vista University Staff Union (VUSU), and National Education and Health Allied Workers Union (NEHAWU). The above-mentioned unions were not regarded as associations for gain, but had duties and responsibilities such as to respect their members' interests. Each union also had a formal constitution, which stipulated general rules and regulations under which it operated.

The above-identified unions, together with the established 1994 Labour Relations Section in the Human Resource Department, tried to promote a good relationship between employees and management at Vista University. Both considered the availability of the Labour Relations Section for the purpose of serving as employees, employers and management on issues of mutual concern. But from the external perspective, it appeared that most employees were dissatisfied with the manner in which employee-management relations were practised. (Informal dialogue. Labour Relations Practitioner. 12 November 2002. Pretoria).

## 1.8 CONCLUSION

This chapter provided in brief an exposure of Vista University's Human Resource Department and the establishment of the Labour Relations Section (pre-1994 and post-1994). There was a clear outline of the success and failure of the Department and strategies to improve functioning of the Department were also discussed. The strategies included attracting qualified employees who matched suitable jobs, maintaining employment security, and the availability of new technologies. A comparison of the Human Resource Department of Vista University and the University of Pretoria was also made. The need for the existence of the Human Resource Department was also discussed.  Labour relations management and the number of existing labour unions were mentioned and their historical origin was discussed.

# CHAPTER TWO

# RESEARCH METHODOLOGY

## 2.1    INTRODUCTION

This chapter deals with research methodology, which will be described comprehensively so that the reader can develop confidence in the methods used. Methodology refers to the steps involved in a given approach.  According to Klein (1999:32) the better way to manage an institution's reputation, is to firstly measure it. In order to acquire a clear understanding and to measure the image and reputation of an institution, a scientifically based research process is important to obtain credible outcomes from questioning techniques, and to ensure that the resultant information is valid and reliable.

In this chapter, the significance of the study, the problem statements, the research question, and limitations of the study will be described. The various qualitative and quantitative research strategies, approaches, and techniques will be explained. Types of interviews conducted will be described, and the chapter will also identify and discuss the type of research method the researcher adopted for the study.

## 2.2    The significance of the study

The purpose of this study is to determine whether Vista University (Mamelodi Campus) practised poor labour relations and what the impact of this was on the staff from the year 1981 to 2003. A further purpose of the study is to examine the relationship that existed between the University management and other structures such as labour unions, as well as the influence these structures had on one another. This is necessary because such relations also determine how

effectively and efficiently the University's management handled issues of labour relations.

This study will also scrutinise procedures followed during grievance resolution and analyse the relationship between parties involved at Vista University in providing effective and efficient management of labour relations. The outcomes of the research are to lay out or compose the expected grievance and disciplinary codes to the Universitys' management.

## 2.3    Problem Statement

Preliminary investigations at Vista University and interview responses regarding how its management practised labour relations revealed that these have had a negative impact. A reason for undertaking the interviews was to obtain up-to-date data regarding the perceived situation. The study is aimed at examining the employee-management relationship at Vista University, and discussing the expected roles and functions of its management in providing effective labour relations. Furthermore, to scritinise the procedure for grievance and disciplinary resolution.

## 2.4    Research Question

To what extent did the Labour Relations Act, (Act 66 of 1995) affect the practice of the employee-management relationship at Vista University from the period 1981 to 2003?

## 2.5    Limitations

Labour relations covers a number of aspects but for the purpose of this study, the researcher made some limitations. Thus, the study does not cover issues related to strikes, lockouts and picketing, retrenchments and maintenance of service workers, compensation for occupational

injuries and diseases, skills development, retrenchments, and maintenance of service workers. Basic guides to issues such as agency shop and closed shop agreements, workplace forums, and severance pay will also not be covered by this study.

## 2.6    Qualitative research method

The term "qualitative research" can mean different things to different people, therefore it is difficult to describe qualitative research in way that will satisfy everybody. It can be defined as a multi-perspective approach using different qualitative techniques and methods of collecting data to social interaction, aimed at describing, making sense of, and interpreting this interaction in terms of meanings attached to the subjects (de Vos, 2000:240). Qualitative research produces findings not only arrived at by statistical procedure, but findings about a person's lifes, experiences, behaviour, emotions as well as about institutional functioning, socio-cultural phenomena and interaction between individuals within the same institution (Strauss and Corbin, 1998:5).

Creswell (1998:15-16) states that qualitative research is an investigating process of understanding based on distinct methodological traditions of inquiry that explore a social problem. During this process, the researcher is able to build a complex and holistic picture, analyse words, and report views of informants and restrict the study to its natural setting. Furthermore, the qualitative research process entails direct observations and relatively unstructured interviewing in natural field settings are genuine. Qualitative researchers use a combination of inductive and deductive reasoning when interpreting their research and observations are typically unstructured, and are often spontaneous, flexible and open-ended (Babbie, 1999:256-266).

There are number of inquiries when applying qualitative research. To clearly understand such inquiries, one needs to have knowledge of different strategic classes, which are discussed below.

- Explanatory research - in this class, studies are conducted in order to develop a casual explanation of some social phenomenon. Researchers try to identify a number of variables such as social, economic or climate variables in the social environment that can be explained as a cause of the consequence of interest. The explanatory strategic class has the objectives of devising theories that are used to explain phenomena and to predict future behaviour. Furthermore, it meets characteristics of qualitative research in the sense that it allows the investors the ability to measure control over events (McNabb, 2002:270).

- Interpretive research- provides the ability for individuals to understand their actions or behaviour in social circumstances and situations. Researchers can be regarded to be interpretive when they assume that humanity's understanding of reality is a function from different meanings assigned to some phenomenon such as language, shared experiences, publications, and consciousness (McNabb, 2002:270).

  The major objective of this strategic class is to create conditions for multi-layered and collaborative interpretations of human experiences. In order to achieve this objective, researchers need to thoroughly understand the organisation and its historical context. This will also help the researcher to understand the Vista employee's experiences of the impact of the <u>Labour Relations Act</u> (Act 66 of 1995).

  McNabb (2002:272) identified some principles of interpretive research which are believed to be able to help researchers to evaluate and conduct interpretive research strategies studies. The first principle is the Hermeutic circle, which helps individuals to understand concepts

from the meanings they brought to its parts; e.g. words, and the way such parts relate to one another.

Secondly, the Context circle relates to the time and situation-specific nature of a particular social phenomenon.

Thirdly, the principle of interaction between the researcher and subject, which maintains that information is developed from the outcomes of interaction between both subjects and researchers rather than from what was inherent in the phenomenon (McNabb, 2002:272).

Fourthly, the principle of abstraction and generalisation attempts to maintain order between disagreeing parts by means of categorising them into generalisations and concepts with broader applications.

Fifthly, dialogical reasoning where the researcher revisits the research design assumptions in the light of new and emerging information.

Multiple interpretations is the sixth principle and it compels researchers to compare interpretations of phenomena against competing interpretations.

Lastly, the principle of suspicion wherein the researcher is required to reject interpretations at face value, and intentionally apply a healthy dose of sceptism on any created conceptualisations (McNabb, 2002.273).

It becomes important for the researchers to apply these seven principles method because they help them to understand of the Vista employees' experiences o the impact of the Labour Relations Act (Act 66 of 1995), and to maintain information based on the outcomes of the interaction that was researched.

### 2.6.1 Critical Research

The primary goal of this strategic class of research is to help individuals to change their beliefs and actions as a means of sensitising them to the unconscious bases for their activities. Being sensitive might result in the identification of inconsistencies between what is true or false and good or bad (McNabb, 2002.273). The critical research strategy can be characterised by two structural themes, which are the distortion in the perception held by members of a group, and rejection of the idea of the disinterested scientists.

The distortion theme provides the critical research with the idea of interacting social theories and applying them in a way that sensitises the social groups to the distortions and problems within their value systems. Therefore, such groups are encouraged to develop strategies to change their value systems, so that they can improve their quality of life (Schwandt, 1997:24-25).

The rejection structural theme in this research strategy deals with society's behaviour of refusing to agree to the social scientist traditional role as an objective, and to replace this idea of active, change-oriented researcher whose focus is on encouraging process among groups (McNabb, 2002.274).

The above-described research class results in a critical question, *"Which strategy is the best?"* The best strategy to adopt depends on the researchers' objectives for the study. Furthermore, it was argued that applying a single strategy would not meet the requirements for trans-disciplinary research. Therefore there is a need to apply a number of strategies throughout the research process for it to become foreseeable (Denzin, 1978:2). Applying this method will enable the researcher to make Vista members aware of the aims, vision and mission of the <u>Labour Relations Act</u> (Act 66 of 1995).

### 2.6.2 Grounded theory

Glaser and Strauss (1997:56) coined the term "grounded theory" to refer to an inductive process of discovering theory from data. It is when a theory is inductively derived from the study of the phenomenon it represents; hence it is concerned with generating theories rather testing them (Yin, 1993:61). Contrasting grounded theory with theories generated from deductive reasoning based on a priori assumptions results in an argument that theories generated from and grounded in observations of the imperial world stand a better chance of being useful and valid than do logico-deductive theories. This enables researchers to become sensitive to new perspectives if their observations are guided exclusively by a specific preconceived theory (Rubin and Babbie, 1997:373).

Although grounded theory emphasises the inductive process, it can also incorporate deductive processes. This could be done through the use of constant comparisons. When researchers detect patterns in an inductive observation, they help to develop concepts and work on a hypothesis based on those patterns. Furthermore, it helps to seek out more cases and to conduct more observations and to compare those observations against the concepts and hypothesis developed from the earlier observations (Rubin and Babbie, 1997:373).

According to Strauss and Corbin (1998:12) grounded theory derived from analysed information is more likely to resemble reality; hence it provides insight, enhances understanding and provides a meaningful guide to action. The process of collecting data in this strategy characterises a "zig zag" process where the researcher gets to the field, collects and analyses information and engages into a process of developing a theory until such theory is confirmed (Creswell, 1997:57).

The organisation and application of structures to data according to an assorted set of research-determined categories is a key requirement

for the grounded theory. As the researcher forms categories, new data are compared across the formed categories. The process of taking the information from data collection and comparing it to established categories is regarded as constant comparative data analysis, and according to Creswell (1997:57) this takes place through the process of coding. Such processes occur in four different phases and are described below.

The first phase is open coding, which according to Strauss and Corbin (1998:101) is the analytical process wherein concepts are identified and their properties and dimensions are realised. During this phase, the researcher is able to develop categories in which a number of properties are created in a continuous shape that will allow the creation of dimensions of new data elements.

Secondly, the axial coding is regarded as a process where categories are related to their sub-categories, and linked at the level of priorities and dimensions (Strauss and Corbin, 1998:101). During this phase, researchers are able to identify central phenomena, examine casual conditions, specific strategies, identify the context and intervening conditions and clearly describe outcomes.

Selective coding is the third phase, and is explained as a process of integrating and refining the theory. It enables the researchers to present conditional propositions.

Lastly, there is the conditional matrix phase wherein new data is integrated into explaining categories to build understanding (McNabb, 2002:303).

### 2.6.3  Ethnographic approach

This strategy is sometimes referred to as naturalistic research. It describes and interprets social groups/systems. As a method research,

it places the emphasis on observing the details of everyday life in a society. The ethnographic approach provides the researcher with the opportunity to study social groups based on observations from the field. This shows why this approach is referred to as a strategy to describe a culture and a way of understanding phenomena from the inhabitant's views (Creswell, 1997:245).

Furthermore, researchers focus on the norms, labelling and assumptions that different groups use to make sense of their daily actions and to behave in a socially acceptable way. This also creates situations in an effort to understand how people try to make sense of what is happening between them (Rubin and Babbie, 1997:375).

Therefore one could conclude by saying that the ethnographic process engages the researchers in the daily activities of the society found within the phenomena being studied. During such time the researcher will have to note down how such groups perceive and interact with their private world. In this regard, the researcher is able to study the behaviour of the Vista employees based on experiences and observations from the labour relations perspective as practised within their institution.

### 2.6.4 Phenomenology

According to Babbie (1999:259) this approach refers to the consideration of all perceived phenomenon, both subjective and objective. This approach maintains that researchers should describe ordinary experiences of the life-world and issues as experienced by the society or individuals. Such issues can be experienced through perception, believing, recalling, and feeling. According to Creswell (1997:52) the phenomenological approach gives the researchers a challenge to group their experience and this allows them to put aside all pre-judgements and rely on imagination and knowledge to acquire the underlying character and essence of experiences.

### 2.6.5  Case study approach

Different definitions for the case study have been proposed. According to Creswell (1994:12) through case studies the inquirer explores a single entity bound by time and activity (i.e. event, process, and institutions) and gathers detailed information by applying a variety of collected information procedures during a specified period.

Yin (1993:3) argued that it is preferable to have the phenomenon under study not readily distinguishable from its context. Cases become relevant when the researcher is trying to attribute fundamental relationships within the explanatory-interpretative-critical classes of qualitative design. Furthermore, cases offer a cognitive understanding usually expressed in rules and principles.

McNabb (2002: 12) provides three categories of case studies namely: intrinsic, instrumental, and collective studies, which are summarised below.

- intrinsic case studies are undertaken when the researcher wants to provide a better understanding of the case itself.  It is not selected for the reason that it represents a large genre neither does the researcher intend to create a theory upon the outcomes of the analysis of the case, but simply because the researcher is interested in it for some reason.

- instrumental case studies are applied whenever the researcher needs to gain greater insight into a specific issue. In this regard, the subject case is expected to continue to a greater understanding of a subject of interest, for example performance measurement.

- collective case studies can be regarded as a group design. In this situation, a group of individual cases are studied together because

they contribute to a greater understanding of a phenomenon, population or general institutional condition (McNabb, 2002:287).

Lastly, case study approach is the most preferred method when the researcher needs to learn the details about how something happened and why it happened, for example, the impact of the <u>Labour Relations Act</u> (Act 66 of 1995) at Vista University. Sources of information used during this research approach may include documents, archival information, interviews, direct observations, and participant observations. In this regard, the researcher must pay attention to the case, and failure to refocus on the case as a whole may be unfortunate. If there appears to be any "missing information" in this regard, it may be filled in through informal discussions from individual knowledge and experiences (O' Sullivan, Rassel, et al. 2003: 40).

### 2.6.6  In-depth interview

This may be regarded as a primary strategy to collect information. It includes open-response questions used to gather information of participant meanings about how individuals conceive of their world and how they explain or "make sense" of important events in their lives. The interviews may differ in format, specialised applications, question content, and the logistics of conducting and recording interviews (Mcmillan and Schumacher. 2001:443).

An in-depth interview is often characterised as a conversation with a goal. Researchers may apply the general interview guide but not a set of specific questions worded precisely the same for every interview. There are a few general questions, with considerable latitude to pursue a wide range of topics. Through this strategy, the researcher can shape the content of the interview by focusing on subjects of interest and this usually encourages interviewed people to look in detail at areas of interests (Mcmillian and Schumacer. 2001: 42).

### 2.6.7  Action Research Strategy

Martella *et al* (1999:526) regards action research as a way of generating knowledge about a social system and anything attempting to change it. Any individual within a particular situation may conduct this strategy with a role in the designing and implementation of the investigation. The action research also contains information that is frequently collected through the experimental period. Its purpose is primarily to determine what occurs in a particular setting, how that something affects participants, and why that particular something occurs.

According to Patton (2002:221) "action research is aiming at resolving specific problems within a programme and organisation". It explicitly and purposefully becomes part of the change process by engaging the people in the programme or organisation in studying their problems in order to solve such problems. Thus, the researcher will gather information about the practical experiences regarding the impact of the Labour Relations Act (Act 66 of 1995) at Vista University (Mamelodi campus) from the year 1981-2003.

Through action research, by way of contrast, design and data collection tend to be more informal. The people in the situation are often directly involved in gathering the information and then study themselves. The results will be used internally to attack specific problems within a programme or organisation or community development process. It most typically focuses on specific problems and issues within the organisation rather than on the overall effectiveness of an entire programme or organisation. Thus this theory-action plan has the narrowest focus, and it took some time based on the findings (Patton. 2002:345).

According McNabb (2002:221) action research is a means of initiating change in social systems through the participation and involvement of

members of the group in the research process, and it has five different models that could be applied, and which are briefly described below.

- Traditional Action Research

This research model has as objective helping to change societal dis-functionalities, while contributing to the general fund of theory and knowledge. This model advocates a situation whereby the researchers will be concerned with the knowledge of both the general laws of human and organisational behaviour, and specific information about the institution.

The traditional action research can sometimes be described as "an informal qualitative model," a formative, interpretive, and experimental model of inquiry in which all individuals involved in the study are contributing participants. Furthermore, this model is characterised firstly by the fact that information gathered might be of any type and can be collected through different means that include structured survey questionnaires, interviews, and sample observations. Secondly, it is contextual although unrealistic in approach because of its interventionist nature.

Thirdly, it focuses on a single case of an organisational unit. Lastly, the researcher brings in scientifical, theoretical knowledge and skills to the practice and experimental knowledge to laden group that collaborate with subjects (McNabb. 2002:348).

- Participating action research

This is a second model with the objective of initiating fundamental and emancipating change in a society. Researchers applying this model are concerned with three activities that include: education, research and action. This model emerged from social movement in oppressed

societies, and for this reason, it creates conditions where interaction with information cannot be divorced from this model.

Furthermore, such researchers believe that through education, society can become aware of better ways to function and they will bring about change. This means that this model is able to help the society members to become active participants in the study and its action aftermath.

Such participants need to be responsible for the study that includes its overall design, gathering of information, the analysis and eventual distribution of the findings. Finally, this model empowers the society to take control of their study; hence the researchers are expected to back away in order to follow the lead of the participants (McNabb. 2002:350-1).

- Empowerment action research

This research is concerned with groups and individuals who are excluded by the majority (i.e. dominant cultural, socio-political and economic coalitions) on the basis of their demographic characteristics that include ethnic, racial, and affiliates. This research typically addresses mental and health issues, citizen's involvement and society's programmes. It begins by creating situations in which a group has been isolated, or are the 'outsiders' of an organisation or community. Then the researcher helps such outsiders to understand the underlying issues and to have a voice in and power over decisions that affect them.

Empowerment action research is collaborative in nature and empowers the society to identify their strengths and resources that were not previously recognised. As such, the society might achieve a mastery over the internal and external forces affecting them. In conclusion, this

research is concerned with bringing out the group's natural abilities and skills under study, rather than focusing on the groups' weaknesses.

- Feminist research

This is the last model of action research and it promotes the feminist agenda by challenging male by dominance by advocating social, political and economical equality between men and women. It seeks to bring about social challenges, emancipate participants, and enhance the lives of the participants.

Researchers applying this method are likely to adopt a positivist approach to their work, although there are no rules that make it a required epistemology. This can be summarised as being able to share values of overcoming oppression, empowering women and transforming societies in order to achieve equality between men and women.

### 2.6.8  Action Science

This model is an intervention method which advocates that societies can improve their interpersonal and organisational effectiveness by examining the underlying beliefs that guide their behaviour. It also takes the form of an evaluation with the intention of bringing to bear any covert contradictions related to the phenomena under study. Furthermore, it integrates the theory-building element of basic research with the then-current applications of research (McNabb. 2002:352).

The process of inquiry followed by this study is premised on the 'what was', 'what is', and 'what should be' paradigm and the then-current information analysed herein subscribes to the critical tenets of this model.

**2.7   Quantitative research method**

This model involves choosing subjects, and data collection techniques such as (questionnaires and observations) procedures for gathering information and procedures for implementing treatments (McMillian and Schumacher. 2001: 165). One of the important principles of quantitative research is to consider how much observations of something take different aspects.

In quantitative studies, control of possible extraneous variables is essential, although educational research rarely exhibits the degree of control evident in studies of physical phenomena. Thus, the researcher must search for extraneous variables that might influence the results of the study. Through this method researchers attempt to attain rich, real, deep and valid information. The rationality in this point is that this model is inductive (Leedy. 1993: 142).

With quantitative research, the concept of internal validity describes the efficacy with which extraneous variables have been controlled. The concern is with the procedure, sampling of subjects, and instruments affecting the extent to which extraneous variables are presented to complicate the interpretation of the findings (McMillian and Schumacher. 2001:165).

Since research involves gathering of information about variables in the study, there is a wide range of techniques and approaches for collecting information to choose from, and among them are questionnaires, tests, interviews, and rating scales. Another step for using quantitative research is choosing the subjects, and these are regarded as individuals who participate in the study, and it is from them that information is collected. As a group, subjects are usually referred to as a sample, and the procedure is usually described as a number of adjectives such as random sampling, convenience, or stratified sampling.

There are a number of distinct scales of measurement that help to measure the targeted features of interest under a range of different conditions and levels of precision. The scales include the nominal, ordinal, internal, and rational scale. Furthermore, researchers may apply statistical significance in order to make judgements because a statistically significant difference is unlikely to have occurred by change factors alone (Martella *et al*. 1999:103).

### 2.7.1  Sampling technique

This is a scientific foundation of everyday practice. It is a technical accounting device to rationalise the collection of data, and to select in an appropriate manner the restricted set of objectives, groups, and events from which the real/actual data will be drawn.

According to Bless and Higson-Smith (1995:85-86) a sample refers to the subject of the whole population which is actually examined by a researcher and whose characteristics are generalised to the entire population. It is in fact the study of the relationship between a population and the samples drawn from it. Its objective is to draw inferences about the known sample statistics, which are obtained by collecting information from the sample. Basically, sampling refers to abandoning certainty in favour of probability (Bless and Higson-Smith. 1995:85-86).

Samplings have few advantages, which can be and are summarised as follows: the collection of information on a sample is less time consuming and less costly. Sampling may be the only practicable method of collecting information. Furthermore, it is a practical way to collect information when the population is infinite or extremely large (Bless and Higson-Smith.1995: 85-86).

When a sampling method is applied, it can use certain procedures and the most common procedures are probability sampling and non-probability sampling, which are explained below.

### 2.7.2  Probability sampling

This procedure can also be regarded as random sampling and it occurs when there is a probability of including each element in the population. It is thus possible to estimate the extent to which the findings based on the sample are likely to differ from what would have been found by studying the whole population. There are also different types of probability samplings, namely, simple random, interval, and stratified sampling, which are now explained below.

- Simple random sampling

"Random" expresses the selection criterion of an element from a population, and as a procedure it provides equal opportunity of selection for each element in a population. A number of techniques can be applied when selecting randomly. The most common technique is the *lottery* technique, where a symbol for each unit of the population is placed in a container, mixed well and then the 'lucky numbers' are drawn which then constitute a sample.

- Interval sampling

This is similar to the simple random sampling but is based on the selection of equal intervals, starting with a randomly selected element on the population list rather than relying on a random number table.

- Stratified random sampling

This is usually applied in social science research, because it is cumbersome for large populations. Its principle is to divide a population into groups named strata so that each element of the population belongs to one stratum. Then within each stratum, random sampling is performed making use of either the simple or the interval sampling method. It preserves promotions of very small samples, and this will allow for any minority to be well represented.

### 2.7.3 Non-probality sampling

This refers to where the probability of including each element of the population in a sample in unknown. In this regard, it becomes difficult to determine the possibility of the inclusion of all representative elements of the population into the sample (Bless and Higson-Smith. 1995:88). Like probability sampling, this method has different types, namely availability sampling, judgmental, and quota sampling, described below.

- Availability sampling

According to Bless and Higson-Smith (1995:94) availability sampling is the most rudimentary technique, and it includes all cases on hand until the sample reaches the desired size. Researchers choose a convenient place assured of finding many people to conduct the interview. This will then provide a good representation. For example, men will be found in bars and women at shopping complexes.

- Judgmental sampling

This method is based on the researchers' judgment with regard to the characteristic of a representative sample. A researcher chooses a

sample on the basis of what is thought to be an average person. Selecting units that were judged to be typical of the population under investigation appears to the best strategy. This strategy has the disadvantage of relying more heavily on the subjective considerations of the researcher than on scientific criterion (Bless and Higson-Smith. 1995:95).

- Quota sampling

Quota sampling is considered to be the non-probability equivalent of stratified sampling, with the purpose of drawing a sample that has the same proportions or characteristics as the whole population. Furthermore, it relies on an accidental choice rather than a random choice, and is often more convenient at an arbitrary location (Bless and Higson-Smith.1995:95).

### 2.7.4  Statistic technique

The term statistics can be used in a number of ways. Firstly, it can be applied to mean the numerical information in a report, for example, number of clients served per day or week, employees earnings, and costs per unit. It can also be used to define the mathematical techniques and procedures followed to collect, describe, analyse, and interpret information. Its process includes simple counts of events, determining the central values of a group of counts, conducting hypothesis tests, and to determining the relationship between variables.

Statistics can be categorised in a number of ways. They can either be used to describe something or to infer similar measurement in another. McNabb (2002:105) regards descriptive statistics as the applied means used to numerically describe events, concepts, work, and people. It can also be applied to summarise information. Hence inferential statistics describes a class of statistics used to make generalisations

about the population from which a sample was taken to draw conclusions regarding such population's character, and to predict future events, or a state of affairs.

A great advantage for researchers using statistics to communicate rather than words is that numbers often make it simple for both the sender and receiver to agree over a given matter. Furthermore, researchers are able use both numerical information and a variety of techniques to process raw information to make it more meaningful. Lastly, researchers are able to measure the central tendency, which includes the means, mode and the median values of set information, to measure variability in the set information, and to measure relative position in the set. Researchers are also able to make correction tests, which will indicate how strong, and in what direction, the two variables are related (McNabb.2002: 105-111).

## 2.8.    Interviews and questionnaires

Interviews and questionnaires are another possible method of gathering data directly from participants. They involve direct personal contact with such a participant who is asked to answer questions. Interviews may occur in a number of ways and will be summarised briefly. Like other research strategies interviews have some advantages and disadvantages, described below.

## 2.8.1  Advantages of interview strategy

- **Flexibility -** it allows the interviewer/researcher to probe for more specific answers and can questions can be repeated if the answer is not clear or shows that the interviewee misunderstood the question. This approach also makes it possible for the researcher to decide which questions are appropriate.

- **Response rate** is the second advantage because the researcher tends to acquire more and better responses than to a mailed questionnaire because participants who are unable to read and write can still answer questions during the interview. Furthermore, many people feel more confident of their speaking ability than of their writing ability.

- Thirdly, there is **control over the environment**. This implies that a researcher can standardise the interview environment by making sure that privacy and silence are maintained when conducting an interview.

- **Questions order** is another advantage wherein the researcher can maintain order over questions and can ensure that respondents do not stray from the subject. **Spontaneity** is maintained wherein the researcher is able to record spontaneous answers and respondents do not have a chance to retract their first answers and give second answers. This is very possible when using a mailed questionnaire. Spontaneous answers may be more informative and less normative than responses about which the interviewee has had time to think.

Furthermore, **respondents alone can answer**, this means that respondents are unable to "cheat" by receiving answers from other respondents or by having others help when completing questionnaires their behalf. **Completeness** is also ensured, as the researcher is able to ensure that all questions are completely answered. This method enables the researcher to record the exact time, date, and place of interview reasons being that if an important event occurs during the study, and affects the response of some participants, the researcher can compare the outcomes before and after the event.

Furthermore, **greater complexity of questionnaires** is another advantage, and in this case researchers can apply more complex

interviews. Skilled, experienced researchers can use questionnaires with some contingencies such as graphs, skips, and arrows.

## 2.8.2  Disadvantages of interview strategy

Interview strategy can be **costly** to construct and reproduce. The interviewers might need to be paid not only for the time they spend but also for training periods, and be reimbursed for travel expenses.  **Time**, is another facto because interviews are often lengthy and may also require some travel allowance as time arranged might not be convenient for the participants who have to travel to their working area, and sometimes even though the interview period might be brief the researcher can complete or conduct a few interviews a day. **Interview bias** may occur in the sense that during the interview process the researcher can cause errors. Errors may occur when recording the responses, or when the responses are misunderstood. Furthermore, a researcher may even record answers when the respondent fails to reply.

## 2.8.3  Different types of interview techniques

There are a number of interview techniques that can be applied in order to gather information from the participants. For the purpose of this research only three types will be summarised.

- The structured interview

This is where the researcher uses previously compiled questions to obtain specific information from the applicants. The questions may be set in a specific order, and the applicants' response to each question is recorded. This form of interview leaves little room for on-the-spot adaptation and the applicants have hardly any leeway for expanding their answers.

- The semi-structured interview

Here only the most important questions are compiled beforehand. The interview is more flexible and the researcher is free to set additional questions to obtain further information about specific aspects.

- The unstructured interview

This is where the researchers have the liberty to adapt questions as they think fit. It is necessary to guard against the interview spiraling to a point where researchers are unable to gather facts that enable them to assess the participant objectively.

## 2.9.    Adopted research method

For the purpose of this research study, the researcher has adopted a case study method. A case study method is a strategy of doing social research, which seeks answers to "how" or "why" questions, in circumstances where the researcher has little control over events being studied. The researcher chose this method because it is an exploration of a "bound system" or case over time through detailed, in-depth data collection involving multiple sources of information rich in context (Creswell. 1997: 61).

As mentioned earlier cases are appropriate when the researcher is trying to attribute fundamental relationships within the explanatory-interpretive-critical classes of qualitative research design. They provide practical wisdom requiring perceptual recognition whilst the theory used to analyse cases offers a cognitive understanding usually expressed in rules, principles, and theories.

The choice of this method affords the researcher an opportunity to infuse the context as a major part of the research. The distinctive

challenges created by this opportunity generate from the context more variables than data points. There is a reliance on multiple sources of evidence rater than a single data collection method, and the need to employ distinctive strategies for research design and analysis, irrespective of the qualitative nature of variables (Yin, 1993:3). Such multiple sources of evidence include observations, interviews, documents, and reports (Creswell, 1997:61).

Case studies illustrate a particular point in a better or more concise way than other research methods. Thus the researcher does not indicate that the selection of cases was appropriate, but that the study adds to the body of knowledge about the topic. Case studies, especially when they are complete, leave the reader with the feeling that all relevant evidence has been collected, evaluated, interpreted, and either rejected or accepted (McNabb, 2002: 298).

A case study considers alternative perspectives, as it is important that the researcher does not limit the analysis of case data to a single point of view. Throughout the analysis of the case data, the researcher will be obliged to identify alternative explanations or interpretations of the new data and to indicate why these are rejected in favour of the adopted explanation.

Furthermore, a case study displays sufficient evidence because data collection solely for the sake of shortness in a case analysis is not desirable, and all relevant evidence must appear in a final story. The researcher is able to condense, distil, and combine data at each stop of the analysis and this would make the final report less than a hodgepodge of unrelated, disjointed, new data.

The basic rationale for a case study is that there are processes and interactions and hence it is dialogical. The inherent intellectual dialogue between the researcher and the phenomena tends to direct a case study towards individualised results (McNabb, 2002: 286).

The multiplicity of variables inherent in the case study method lionised the dichotomy between qualitative and quantitative research as a cartoon in the social sciences (Yin, 1997:57). It is the researcher's observation, therefore that the scientific, data-driven and outcome-orientation of case studies bridges the gap between qualitative and qualitative research within the social sciences.

## 2.10. CONCLUSION

In this study, the researcher described the significance of study, the problem statement, research question, and the limitations of the study. Two research methods were discussed in order to provide the various lines of sight that each method generates, and to provide a clear explanation of both qualitative and quantitative research techniques and strategies to gather information from different participants, and this could help the reader to develop confidence in the methods used. Different types of interviews as a means to collect information were explained. The researcher went further to identify and discuss the type of research method adopted for the research.

# CHAPTER THREE

# AN OVERVIEW OF LABOUR RELATIONS

## 3.1   INTRODUCTION

This chapter deals with the background to the development of the Labour Relations Act (Act 66 of 1995), the definition of labour relations, the concepts and values in the Act, and legislation affecting the employment relationship. Factors influencing the labour relations in the workplace, the participants, processes, and practices of labour relations will also be described.

A literature review is defined as a systematic, and reproducible method used to identify, evaluate and interpret the existing body of recorded work that has been produced by researchers and practitioners. It provides evidence to the research audience that the researcher is aware of the work that was already done on the subject, and points out what are believed to be the key issues in the research field. Furthermore, it establishes theoretical and principle-based co-ordinates for readers in terms of what was applied to shape the research design (McNabb.2002: 393-4).

## 3.2.   Background to the development of the Labour Relations Act (Act 66 of 1995)

According to the explanatory memorandum of the Labour Relations Bill (RSA. 1995: 110), the Cabinet approved that a ministerial legal task team should be appointed, who would overhaul the laws regulating labour relations. The task team had to draft the Labour Relations Bill, which would comply with the Constitution of South Africa, and simplify the language used in the legislation so that it could be easily understood by both employers and employees; furthermore, to clearly

spell out the rights and obligations of the employees, unions, employers and their organisations (Nel.2002: 57).

The Labour Relation Act of 1956, as amended, was identified as part of the process of drafting the Labour Relations Act (Act 66 of 1995). A number of problems that existed with the labour law at the time, and its primary objectives include the following:

Firstly, to advance the economic development, social justice, labour peace and democracy in the working environment by means of firstly comprehending and regulating the fundamental rights of the employees and employers in Section 23 of Republic of South African Constitutional Act (Act 106 of 1996) that states that:

- every individual shall have the right to fair labour practice
- all employees shall have the right to form and join labour unions of their interests and the employers to form employers' organisations
- both employers and employees shall have the right to bargain collectively, and the right to strike for the purpose of collective bargaining

**Thus all employees both men and women have the right to be treated fairly and equally by their employers. No employee shall be discriminated against based on race, gender, colour, sex or religion. They should have the right to join any labour unions that would protect and represent their own needs and expectations. Such unions, for example, the Congress of South African Trade Union (COSATU), deal with issues that include protecting their members against unfair dismissal and wage increase. Furthermore, both shall be protected during negotiation processes in an attempt to reach agreement and can strike if need be in an attempt to influence their employers to accept their decision.**

Secondly, to provide a clear framework for labour unions and employees, and employers and their organisations in order to bargain collectively on terms and conditions of employment, salaries and other

issues of mutual interest (Brassey. 1987: 7-14). This includes operating regulations that will ensure effective execution and management of functions within an institution. For example, the line communication, confidential information, office regulations the conduct behaviour, damage to or loss of property, working hours, smoking, information on employees' benefits, disciplinary, grievance and retrenchment procedure.

Lastly, to effectively promote and maintain collective bargaining orderly, at sectoral level, employee participation in decision making in the workplace and the effective resolution of labour disputes (Nel. 2002: 58-59). Employers and employees have different needs, expectations and interests, and each one strives to protect their own. Effective participation in decision-making processes will promote a sound labour dispute resolution process and that will result in a fair labour relation practice. Participation in this regard can occur in a number of ways, including the following: seminar, general staff meetings, and briefing sessions.

### 3.3.    What are labour relations?

Labour relations provide both a practical and theoretical framework by means of which the relationships between collectives (such as labour unions and employers organisations) and individuals are regulated. It, however, tends to reflect to a greater extent the realities of employment relationships in the post-industrialisation era. Its purpose can be viewed as the creation and promotion of a friendly working environment through the regulations of the employment relationship. Venter (2003:3) defines Labour Relations as a term used to describe the dynamic complexities of the various relationships between parties to the employment relationship.

Moreover, the labour relationship is a human relationship and accordingly, will be nurtured by mutuality of interest, reciprocity to support, understand, trust, facilitate communication, shared goals and

values, and if one or more of these mentioned qualities is absent will cause the process to fade (Bendix.1996: 4; Venter.2003: 4).

### 3.3.1 Concepts and values in labour relations

A number of concepts are usually used when people talk about labour relations. The attitudes and behaviour of participants within labour relations are largely determined by their personal beliefs. Mainly, these concepts include fairness and equity, power and authority, rights and responsibilities, and integrity and trust. These are described below.

### 3.3.1.1 Fairness and equity

Fairness or equity absolutely underlines the entire conduct of labour relations, and it is most frequently associated with considerations of pay and dismissals. However, many people may argue that nothing in life is ever fair. Some would argue that the existence of social inequalities is both inevitable and fair because of differences in each individuals' personal attributes. Certainly such inequalities exist within both the society and their organisations, for example, unequal distribution of wealth, income, and variations in benefits such as status, education and job security (Salamon. 2000: 76). Furthermore, fairness is mostly seen as a relative and variable concept with which to examine the conduct of relationships.

It may imply that a particular exchange is consistent with other exchanges undertaken elsewhere. In this regard one is able to say there are 'fair' inequalities, but it would need a wide range of agreement with regard to the criteria to determine both the similarities and differences between situations and evaluation of their relative importance. This could only be considered fair if the other participants consider it to be fair in relation to themselves and their groups (Salamon 2000. 77).

The Labour Relation Act may in this case try to achieve equity and fairness in the working place by promoting equal opportunity through the elimination of unfair discrimination to implement other measures that would redress the disadvantaged in employment experiences by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workforce.

Moreover, it may, particularly in respect of non-monetary exchanges, imply equity of treatment and considerations in the conduct of different relationships and within the same relationship over time.

### 3.3.1.2 Power and authority

This concept occupies a central position in labour relations, particularly with respect to its collective aspects. A number of people make value judgements based on labour unions having either too much or too little authority over their own organisation.

There is no clear definition of power and it has different meanings. It is useful to differentiate between the following:

- power might mean the ability to control, thus to regulate a situation or individual despite any attempt of influence from another group or individual.

- it might also mean the ability to influence and thereby secure some modification in another party's decisions or behaviour. Its ability to influence may be subdivided into two different meanings: firstly, open expression; in this regard it is the ability to force a change in the other party's decision. Secondly, the ability to make understood influence that will form an integral part of the environment that has to be considered by the other party when making decisions.

**The situation explained above mainly occurs through availability of effective labour unions in the workplace, in which almost all sectors of the economy, including the public service, have representative unions which engage employees over issues affecting their workplace. Labour unions have the power to protect their members' interest against their members' exploitation. They play an influential role in determining the labour market and labour relations' policies in the country. For example, unions influence the employers to appreciate the benefits of negotiating with their employees, and the fruits of these negotiations include the agreements on union recognition, wages, conditions of service, workplace restructuring and retrenchments.**

**Furthermore, the representative labour union is entitled to hold meetings with employees outside the working hours at the employers' premises and its members have powers vested on them to vote at such premises during any elections contemplated in that unions' constitution. The** <u>**Labour Relations Act**</u> **also stats that powers conferred on the labour unions are subject to any conditions as to time and place that are reasonable and necessary to safeguard the life and property or to prevent the undue description of work.**

Furthermore, power has its own major interrelated sources within the organisational relationship which are briefly described below.

**Rewards** include having an influence over the objectives achieved within an organisation. **Coercion** includes one's ability to cause some disciplinary measures against the other, for example, being able to deny people's rewards for their achieved goals. **Legitimisation** implies individuals who are occupying the role that is formally designated as containing a superior trend. **Referment** is when one has personal attributes that may lead subordinates to develop different opinions. **Expertise** simply implies one's experience that is considered superior to that of the subordinates.

Hence authority is defined in terms of the legitimate use of power. But others regard it as the right inherent in a position to use direction in such a way that the organisation's objectives and goals are set and reached (Salamon 2000: 79-80). One would say that unions have the

authority to contribute positively towards the success of their organisation. The contribution may include, for example, some aspects of the conditions of employment. Thus, through the unions' contribution in the decision-making process in the workplace employees might benefit towards achieving the institution's goals and objectives without any harm.

### 3.3.1.3 Rights and responsibilities

According to Salamon (2000:85) "a right is defined as a legal claim, which is due to anyone by law or nature in which appears to rest on two distinctive groups of concepts". The first concept includes freedom and entitlement, and it implies a positive approach wherein the "rights" are recognised as being fundamental in nature and universally applicable to all, for example, the right to freedom of speech. The second concept includes privileges or resistance, which suggests a negative approach wherein the rights are being regarded as a special advantage not given to others, for example the right to strike (Salamon. 2000:85).

Workers have the right to strike and employers too have the right to lock out workers, if a dispute cannot be resolved. Employees have the right to legally strike and can be locked out by their employees if their dispute has been referred to the council or the Centre for Conciliation, Mediation and Arbitration, and a certificate issued indicating that such dispute remained unresolved. Every employer has the right to expel employees who are on strike if, for example, a period of 30 working days has elapsed since the referrals were received by the council or a 48 hours' written notice of the commencement of the strike was given to the employer or the council. Furthermore, during legal strikes, employers do not have to pay employees unless the workers ask that payment in some kind, for example, accommodation, food, and basic amenities be continued, and such employers may fairly dismiss a worker for misconduct or for operational needs.

Hence responsibility is defined as a duty, obligation or control over something. Once more there are different definitions of responsibility. On the one hand, responsibility may imply a constraint on the individual's freedom to act, thus to be accountable for particular actions, while on the other hand, it may imply having the freedom to make decisions and exercise judgement, i.e. to exercise control (Salamon. 2000:86). Employers and employees should be responsible for their actions in the workplace. Both should be answerable for their behaviour. For example, if the labour union representative decides to strike as a means of influencing management to accept its decisions, they should account for such actions. The same applies to employers, if they consider locking out employees from entering the workplace, they should be responsible for such a decision. Secondly, during wage negotiations, there appears to be a situation where an employer rejects the employees' request, and such action should be accounted for.

### 3.3.1.4 Integrity and trust

Integrity can be defined in terms of individuals behaving according to their personal values and beliefs. Its essential quality is that individual words and behaviour should be realised by others to agree and express a consistent set of values. Normally problems occur when an individual's personal beliefs and values do not agree with the organisational needs and expectations placed on such individual's role. Vista University, like any other Public Service, is a large institution with many employees who are from different ethnic, cultural and historical backgrounds. Such employees have different norms and values. Every employee has the right to protect and honour his/her own values and norms. It only becomes when such norms and values contradict during the decision-making process in the workplace for successful achievement of institutions' goals and objectives since none is likely to sacrifice their values.

Trust may be established only between individuals, rather than between organisational collectives, for example, between management and labour unions. Trust may occur on two levels, the high trust and low trust employment relationships. According to Fox in Salamon (2000: 88) high-trust relationship entail a situation wherein employers and employees are prepared to accept an informal "give and take" basis to their relationship and this implies a win –win situation, whereas the low-trust relationship includes a situation where there is a brief formalised control within the relationship.

Furthermore, trust can take place between groups that have confidence in, and feel able to rely on the other. None of the parties wants to actively or passively harm the other. Thus both parties need to practise fair labour relations within their workplace (Salamon. 2000: 88-89).

## 3.3.2  Legislation impacting on employment relationships

This study will enable the reader to apply the present legislation that regulates the employment relationship in practice. To facilitate an understanding of the different structures that constitute the system, and how these structures can be applied in practice. For the purpose of this study, aspects such as freedom of association and general protection, organisational rights, and collective agreements will be discussed.

### 3.3.2.1 Freedom of association and general protection

Section 4 of the <u>Labour Relations Act</u> states that every worker has the right, subject to its constitution, to join and to participate in forming a labour union. Furthermore, union members have the right to participate during the elections of the office-bearers, labour union representatives, i.e., stewards, or the right to stand for elections and be appointed as an office bearer, and if appointed, will be expected to complete the duties

of a labour union representative as subjected to such union's constitution.

In addition, the Act provides that no person may discriminate against an employee by means of, for example, forcing employees not to or to become a member of a labour union or to resign from being a member of such a particular union. Secondly, to prejudice any employee for participating in the formation of a labour union.

To participate in any legal activities of labour unions, refusal to undertake actions that employers may not legally allow prejudicing any employees for having disclosed information that the employee is at liberty to give someone.  Section 4 of the Labour Relations Act  was applied in a number of institutions including Vista University from the year 1981-2003. During that period employees were able to join labour unions of their interest. But it was unfortunate because the Vista University's management only respected some selected clauses of the section, which favoured them. Thus, some authority and views of the labour unions were not actively recognised by the management.

Section 7 of the Labour Relations Act (Act 66 of 1995) states that employers' rights must be protected. Thus, no person may threaten to force any employer to or not to become a member of any employers' organisation or rather to cancel such a membership. The above-mentioned situation is also applicable to the employers.

## 3.3.2.2 Organisational rights

These are parts of the Act, and include aspects such as the right to access, deduction of labour unions' subscriptions, number of union's representatives to be elected, and disclosure of information. Each of these aspects will be summarised below.

(i)      Labour unions' access to the workplace

Section 12 of the <u>Labour Relations Act</u> states that any official representative of a labour union is permitted access to the employers' premises to recruit and to talk with its members. Such representatives are allowed to hold meetings with employees after working hours within the employers' premises.  Members of such unions are also entitled to vote within their work premises during elections in terms of the union's constitution. Moreover, the rights conferred by this section are subject to any conditions as to time and place that are researchable and necessary to safeguard life and property, and to prevent the excessive disruption of work.

Interview response revealed that a number of managers do not comply and respect the content of this section, because there appear to be number a of threats and intimidations from employers regarding giving their employees the right to recruit, join and vote for any labour union of their interest, which will protect own expectation from their employers' exploitation.

(ii)     Deduction of labour unions' subscription

Labour unions may authorise the employers in writing to deduct unions' subscription from the employees' salaries. Such deductions must happen as soon as possible and must be remitted to the representative union by not later than the 15$^{th}$ day the month following the date of each deduction.

Employees have the right to cancel the authorisation by serving the employer and the representative union with a month's written notice. In the case of the public service, it should be a three months' notice. Furthermore, with each monthly remittance, the employer must provide the labour union with a list of every member from whose salaries the deductions were made, the details of the amount deducted, and a copy of every notice of restoration.

(iii)    Number of labour unions' representative

A representative labour union is any registered union, or two or more registered unions acting jointly, that are adequately representative of employees employed within a particular workplace. Section 14 of the <u>Labour Relations Act</u> states that in any working environment with at least ten members of a representative union, such members have the right to elect among themselves.

**For more than ten members of the union employed in the same working environment, a maximum of two union representatives may be appointed. For more than 50 members' employed, two representatives may be appointed for the first 50 members, plus one additional representative for every 100 members up to a maximum of seven representatives.**

In case of more than 1000 union members employed in a workplace, up to twelve union representatives for the first 1000 members may be appointed, plus one additional representative for every 500 members, up to a maximum of twenty representatives.

Labour unions' representatives have the right to perform the following functions: the right to assist and represent the employee in grievance and disciplinary proceedings; the right to observe the employers' fulfilment with the workplace-related provisions of the <u>Labour Relations Act</u> of any law regulating terms and conditions of employment, and any collective agreement binding the employer.

The representative have the right to report any suspected contraventions of the Labour Relations Act. Furthermore, he/she should report any law regulating the representative labour union and any responsible authority; and lastly, to perform any other function agreed to between the representative labour union and the employers.

(iv)    Disclosure of information

Section 16 of the <u>Labour Relations Act</u> states that an employer must disclose to a labour union representative all relevant information required from the effective performance of his or her functions. The employer should disclose all relevant information to the union representative whenever both parties are engaged in collective bargaining. If such information is confidential, then the employer must notify the union's representative in writing. Confidential information in this regard may include information that is legally privileged, that if disclosed may cause substantial harm to an employee or the employer, and that is private and personal relating to an employee, unless such employee consents to the disclosure of the information.

(v)     Exercising organisational rights

Any registered union that wishes to exercise its organisational rights in a working environment must firstly notify the employers in writing. The notice must be accompanied by such union's certificate of registration, and must clearly specify the workplace where such union wishes to exercise its rights, its representative in the workplace, and the facts indicating that it is a representative labour union. Lastly, it must give the rights that the union needs to exercise, and how they will be exercised.

The meeting between employers and registered unions must take place within 30 days after receiving the unions' notice of exercising its rights. The two must attempt to end a collective agreement on how the union will exercise its organisational rights. In the case of failure to reach an agreement the dispute may in writing be referred to the commission. Either the union or employer may do the referral.

### 3.3.2.3 Collective agreement

Collective agreement means a written agreement about terms and conditions of employment done between one or more registered labour unions and one or more employers or employers' associations, and such an agreement must be in writing.

Section 23 of the Labour Relations Act provides that a collective agreement binds the following: parties to the collective agreement, all members of the labour unions, and employers as members of the registered employers' organisation. In addition, it binds terms and conditions of employment. For the purpose of this study more attention will be paid to the dispute about collective agreement, and to the types of agreements in the workplace, i.e., the agency shop agreement and closed shop agreement.

(i)      Disputes about collective agreements

Section 145 provides that any individual against whom an arbitration award was favoured regarding the application and interpretation of a collective agreement has the right to apply in writing to the Labour Court to have such award reviewed. It must clearly be stated that application for such a review differs from an appeal. For such application to flourish, the burden of proof shifts to the applicant who has to show that the commissioner committed material defects during the arbitration proceedings.

The defects include, for example, the commissioner's actions of misconduct committed when undertaking his/her duties as an arbitrator, or exceeding his/her powers as a commissioner, or a rudely obtained award.  If that is the case, the Labour Court may hang about the enforcement of the award, awaiting its judgment. Should the award be set aside, the court may determine the dispute in a way it regards as suitable, or make any order it regards as appropriate about the

procedure to be followed to determine the dispute. The above actions should be taken in consideration with the nature of the application.

(ii)     Agency shop agreement

This agreement reflects the situation where employees within a particular bargaining unit are required to join a particular labour union and to pay an agency fee to such a union. Such an agreement should usually be contained in a collective agreement. The rationality behind this type of agreement is the stabilisation of collective bargaining by preventing an explosion of unions in any workplace, and the reduction of conflict and inter-union competition.

In addition, the agreement of this nature seeks to address the problem of the "free rider", and to guarantee that unions operate in the best interests of all employees. Such agreements might upset those employees who refuse to contribute, although indirectly, to the objectives and ideologies adopted by such union(s).

(iii)    Closed shop agreement

This is even more controversial than the agency shop agreement. It is the outcomes of an agreement between a labour union and the employer whereby only union members can be employed in an organisation. However, the closed shop fell into disgrace when the old established unions used their privileges to obstruct the entry of black emergent at the workplace. There are a number of agreements in favour of the closed shop agreement.

It overcomes the "free rider" problem where some employees evade paying membership fees but still receive all the benefits. It increases union power by ensuring solidarity during industrial action and strengthens the union's financial resources. Furthermore, it facilitates management communication with the workers through a single

channel. Lastly, it confirms the status of the union in the workplace, therefore easing the pressure on the union to constantly challenge management to sustain its role.

Arguments against the closed agreement include that it is a breach of an individual's liberty to force workers to become members of the union. It is divergent to the principle of freedom of association to compel employees to join a specific labour union. Closed shop agreement allows the unions officials to take membership for granted.

Members cannot "vote with their feet" and leave the union if they feel disgruntled. Due to the financial security provided by increased membership fees under a closed shop agreement, management may designate leaders. Lastly, labour unions operating under the closed shop agreement lose vitality and the leadership loses touch with the shop floor, thus promoting oligarchic practices (Finnmore. 1999: 94).

### 3.3.3  Participants in the South African labour relations system

There appear to be three major role players that characterise the labour relationship, namely, employers, employees, and the government. This type of relationship is called a tri-party relationship and its roles are summarised as follows,

### 3.3.3.1 The government

The government comprises of the legislature, executive, and judicial authorities. The executive authority includes the political leadership, which is responsible for formulating and executing the labour policies and strategies. The legislative authority in this case is there to shape the labour legislative framework that will govern the relationship between employers and employees, while the judicial authority, particularly the constitutional and labour courts have the duty to interpret the law developed by the legislature as it applies to the labour

relationship. Thus, this framework comprises of laws passed by the parliament. The government of the day has the role of influencing the nature of the employment relationship, and generally, the system of labour relations is a reflection of the political dispensation governing the country.

Furthermore, it passed the Labour Relations Act in order to advance economic development, social justice, and labour peace and to democratise the workplace by fulfilling the primary objectives of such an Act. The objectives include the following: to give effect to and regulate the fundamental rights conferred by Section 27 of the RSA Constitution Act (Act 108 of 1996) and to give effect to the obligations incurred by the Republic as a member state of the International Labour Organisation (ILO), that covers providing the framework within which employers and the recognised labour unions can collectively bargain to determine issues such as wages, and terms and conditions of employment.

### 3.3.3.2 Employees and labour unions

Employees provide services to their employers in exchange for salary. For employees to depend financially or economically on employers encourages the two to strive for balance of power between them. For this reason, employees combine to form labour unions in order to collectively counter these imbalances (du Toit and Woolfrey 1996:88-96).

The labour unions are therefore regarded as "any organisation whose membership consist of employees, who seek to organise and represent their interests both in the workplace and the society, and particularly seek to regulate their employment relationship through collective bargaining with their employers" (Salamon.1998:85. Venter. 2003: 67).

There are number of reasons why employees join labour unions. Employees join labour unions in order to protect their interests against their employers' exploitation. It is believed that united employees stand better chances of combating their employers' strength than scattered employees (Polokangas. 2000: 33-34).

Secondly, labour unions have the primary role of ensuring that their members' salaries adequately meet the standard of living. Thirdly, unions deal with issues related to, for example, job security, thus they intervene to protect members against unfair dismissal. This is more relevant to the situation in South Africa where issues such as retrenchments are common. Fourthly, they play a role in bringing in demoralisation, because during the apartheid era, unions provided forums for disenfranchised black South Africans to express their political dissatisfaction and bring fundamental change. Through the Labour Relations Act, such unions embarked on socio-political protest action for the purpose of protecting their members' socio-economic interests (Polokangas. 2000: 33-34).

Fifthly, unions are formed to protect their members who are unequally skilled and those who practise a specific trade. Thus employees try to protect their interests, and maintain and promote their level of status by joining such unions (Venter 2003:71). Such unions apply methods such as collective bargaining, coercive action, affiliation and lobbying to achieve their objectives.

### 3.3.3.3 Employers and their organisations

Employers are regarded as individuals or groups of individuals who hire and provide labour and they also provide employment in the labour relationship. In order to maintain a balance of power between labour unions and employees, employers also decided to combine and form collectives with the intention of countering the power of labour unions (du Plessies, Fouche *et al*. 1998: 18).

In this regard, they can bring pressure to bear not only on unions at the bargaining table, but also on the government by representing interests of their members. "Giant" employers who need concessions and settlements dominate such employers' organisations, which may not be available for smaller members (Venter.2003: 86).

### 3.3.4 Factors influencing labour relations within the workplace

South African labour relations are not only influenced by factors such as the labour environments and shop-floor agreement, but also by socio-political and economic factors that impact on the activities and attitudes of various factors in the labour relations field, i.e., the government, employees and employers. The impact of the above-mentioned factors has complicated the South African labour relations situation to an extent that employers have only a limited ability to control the results of such relations. This led to a great deal of frustration for employers, who often feel that the government unfairly protects the employees.

Workers on the other hand are becoming aware of their own power through their labour unions, and are willing to pit their power against those of their employers at every opportunity. The influencing factors are now discussed.

### 3.3.4.1 Socio-political variables

South Africa is still undergoing a process of change regarding political labour issues. Until political stability is reached in the country, labour unions' tactics will continue to have political bias. Therefore, the nature of labour unions' demands within an institution will depend on the progress made with the restructuring of the political dispensation. In this regard, the following are the possibilities that might occur.

Employees will probably strive to become more involved in management decisions if political democracy becomes a reality. There will be pressure on the private sector to make contributions towards fighting poverty and towards rising living standards by, for example, financing social services. This might encourage co-operation between organized employees and employers at various levels. Furthermore, violence and intimidation in society naturally spill over into the working environment. In this regard, agreements and codes of conducts become essential for order, peace, and security.

The changing value system of society is another aspect. For example, it becomes necessary and preferable to involve women in the business and professional world. Equal opportunities are therefore a prerequisite. However, women also sometimes have personal conflicting needs when it comes to their work and family. For example, childcare is usually important to women.

Another important matter in this regard is the employees' resistance to technological development. Employers should involve employees both in decisions on improvements and in their implementation. This should be done to deny employees the chance to develop resistance to change, which in turn could result in conflict in the working environment.

### 3.3.4.2 Economic variables

There is a direct and casual relationship between economic factors and labour relations in the sense that economic stagnation usually leads to labour cost problem solving actions from the employers' side, for example, the freezing of increments and lower employment rate. The outcomes might lead to frustration from the workers' side, the hardening of attitudes, and various forms of labour unrest.

In terms of economic growth, employees' representative organizations may also lay a claim to a bigger share of the higher profit gained by employers, but generally they are on a more rational basis. The inverse situation is just dramatic. When problems are being experienced in the labour relations field, it leads not only to a lack of economic confidence by both national and international entrepreneurs, but also to lower employment due to the risk factor attributed to labour (Nel. 1989:1333).

### 3.3.5  The process of labour relations in South Africa

This could take place in three ways, which include collective bargaining, employee involvement and participation, and conciliation and arbitration. These processes are described below.

### 3.3.5.1 Collective bargaining

This is a process whereby labour representatives and employers' representatives negotiate and interact somehow in an attempt to reach agreements and to uphold those agreements pertaining to issues related to the employment relationship. It is therefore only one of many processes that combine to make up the field of study of employment relationships (Grogan.2003: 308-309).

Furthermore, it offers challenges to all participants for example, employees are facing the challenge of behaving rationally in their interaction with employers, while employees are challenged to try and satisfy their needs within the framework of the dynamics of the organisation and in collaboration with their employers. It also influences the income and expenditure ratio, the quality of the product or the service, the climate of the organisation and its public image (Nel.2002: 134).

**3.3.5.1.1 The nature of collective bargaining**

Collective bargaining as a process usually takes place either when active agreement terminates and employer-union relationship must be reviewed, or when conflicts of interests arises and existing agreements are rejected, or when the need for an agreement arises because of a dispute (Rosenbloom and Kravchuk. 2005: 251-252). Collective bargaining is referred to as an "interactive process", rather a "free process" because its nature of interaction is determined by the dynamics, needs, and desires of more than one group. Furthermore, the nature and extent of this process is considerably constrained by environmental determinants, which are given below.

(i)     Communication process

During the collective bargaining process different parties are able to share information and knowledge regarding their needs and wants as well as their attitudes. It is essentially a communication process, and therefore demonstrates all the problems usually associated with communication. Furthermore, during the collective bargaining process, different communication types should be applied to have a clear interpretation of transformed needs from groups (Nel: 2002:139).

(ii)     Economic process

Collective bargaining has as objective improving wages and conditions of service within an organisation. A number of labour unions, for example, National Union Mine Workers of South Africa (NUMSA) usually negotiate with their employers. It is also an actively economic market as it plays an important role during the negotiations about the prices, for example, during the buying and selling of a particular product. The Department of Trade and Industry (DTI) and other concerned groups (proudly South African) also had some economic

bargaining based on encouraging individuals to rather buy South African made products that to import.

(iii)    Negotiation process

Collective bargaining is referred to as a method of negotiation, which is primarily aimed at the economic aspects of the employee-employer relationship. In this approach, the method will be analysed in terms of the behaviour and the counter-behaviour of the parties involved in the negotiations. Labour Unions also hold negotiations with their employers with the intention of maintaining a good employer-employee relationship. The negotiations may include aspects such as conditions of service, leave and means of dispute resolution.

(iv)    Management technique

People usually say that collective bargaining is a method of joint decision-making that has a constitutional flavour, is all-inclusive, and it is generally agreed that while collective bargaining is the mechanism for participation and consultation, employees are interested only in matters that affect them directly.

A number of ways in which collective bargaining can influence the organisation's management are as follows it can compel employers to follow certain rules when handling personnel regarding matters such as promotions, wages, and overtime. Sometimes the unions might decide to ignore their institution's policies and procedures just for them to benefit from the outcomes of the bargaining. Employers can also be obliged to act reasonably, to be just and to avoid arbitrary decisions. Thus, there must be full consultation with employees when making decisions. Furthermore, collective bargaining can include prohibition on certain acceptable modes of behaviour, for example withholding employees' salaries as a form of discipline.

(v)     Conflict control mechanism

Collective bargaining as a conflict-control mechanism is the most dynamic, and is based on the principle of participation and the proactive regulation of the workplace relationship. Therefore, it is basically a means of alleviating tension through participation between employers and employees (Nel: 2002: 137).

### 3.3.5.1.2 Bargaining approaches and structures

Various approaches to collective bargaining include the distributive, integrative, attitudinal, and intra-organisational bargaining and these are discussed below.

• Distributive bargaining

This type of bargain is common in South Africa, and is based on the adversarial relationship between employers and employees wherein they have direct conflicting goals. Normally the outcomes of this approach favour one party. Thus, there is a "win-lose" situation. In a traditional sense, the essence of this approach centres on matters such as wages, benefits, and bonuses.  For example, when bargaining is based on wages, the employer will be willing to give much less scale than what was requested by labour unions. Finally, negotiation strategies are usually based on emotional elements and threats (Nel. 2002:139). The South African Municipal Workers Union (SAMWU) had a number of negotiations for increase in wage that was estimated at 10 percent but the employer was willing to offer as little as 6 percent, and this situation resulted in the union threatening to undergo a mass strike.

- Interactive bargaining

This approach occurs when negotiators are applying a set of strategies and activities where the goals are not in conflict, and they normally focus on issues of mutual concern. This approach appears to be a joint problem-solving approach wherein the aims of the opposing parties can be integrated, and its outcomes are that both parties become winners.

There are a few general guidelines for the conduct of the interactive bargaining approach: the process of exchanging information should be open to everyone and an attempt made to determine whether interactive bargaining is possible. During the interactive bargaining there should be a search for alternatives and the consequences of each alternative should be well evaluated before a final decision is made, and both parties should be motivated and free access to information should be maintained. Finally, meetings should take place frequently and the climate of trust must be maintained between both parties (Nel. 2002: 139).

- Attitudinal structuring

This approach is aimed at influencing the course of negotiations by changing the attitude and behaviour of the other party and the nature of the encounter. It is an emotional, interpersonal process with the purpose of replacing hostility with friendliness, opposition with cooperation, and suspicion with trust.

- Intra-organisational bargaining

Intra-organisational bargaining involves a set of strategies and activities used by both parties (constituencies and negotiators) to gain consensus among people within their own organisations. It forms an

integral part of the collective bargaining process and also involves the efforts of both sets of negotiators to line up the interests and expectations of their constituencies regarding what they need to achieve. This process requires continual adjustments and readjustments that take place before and during the negotiations (Nel.2003: 140).

### 3.3.5.1.3 Bargaining structures

Bargaining structures include aspects such as bargaining units and levels. Bargaining units represent the employees who will be covered by an agreement, and are composed in a way that will determine on behalf of whom and with whom bargaining is to be done. This unit will determine the level of bargaining to take place, thus either the shop floor level or at the head offices, with certain employees in a certain area (Nel.2003: 140).

Bendix (2003:246) identified four types of bargaining levels, and their advantages and disadvantages.

**The narrow decentralised units**, which occur when a union represents the interests of one group of workers at a particular point and where various unions, each constituting a different bargaining unit, represent different groups. **The broad decentralised units** occur where a number of labour unions at a particular organisation combine to form a bargaining unit. Such unions may form a coalition where each one retains its independence and may withdraw from such coalition once negotiations have been finalised. Advantages of the decentralised units are that, salaries are differentiated according to particular organisations, and benefits are made to measure individual needs, and programmes are made to measure specific needs. Decentralised bargaining diffuses workplace tensions and increases workplace organisation. Furthermore, it maintains a greater opportunity for democratic decision-making and minimises intra-organisational conflict.

Lastly, it allows both employers and labour unions to follow their own words.

The disadvantages include a danger of whipsawing, employers are afraid of becoming uncompetitive, and there are little benefits provided. During decentralised bargaining there appears to be less likelihood of large scale training programmes and an increase of spontaneous strikes. Furthermore, workplace representatives may become too independent of unions and bargaining may not be sufficiently experienced. Lastly, it has short-term objectives, and that might lead to employer pay-offs and inflation of wages.

**Narrow centralised units** occur when a number of unions representing particular interests in an organisation bargain centrally within an organisation, with a number of employers from the same industry or with employers from different industries. **The broad centralised units** occur when unions representing diverse interests bargain with a number of employers at the organisational level. Advantages of centralised bargaining are as follows: employees' wages are out of competition, and it maintains better benefits at a lesser costs; centralised bargaining provides an opportunity for larger-scale training programmes. Furthermore, bargainers are usually more professional and it limits the power of workplace organisation. Lastly, it provides overall uniform standards and minimum safeguards.

The disadvantages are that through the centralised bargaining, diverse interests are represented and there is a possibility that democratic decision-making in unions and employers' organisations will decrease. There appears to be wide scale industrial action and a greater intra-organisational conflict. Lastly, wages may be set at a minimum level, and the bargaining process itself does not diffuse tensions (Nel.2003: 141).

### 3..3.5.1.4 Industrial action and strike handling

Section 213 of the <u>Labour Relations Act</u> regards strikes as the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are employed by the same employer or a different employer for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employers and employees, and every reference to work in this definition includes overtime work, whether it is voluntary or compulsory.

There are various ways of classifying strikes which may be caused by a number of factors, and these are summarised below.

**An economic strike** may be regarded as an ordinary strike directly related to the employees' interests. It is the one where the demands regarding salaries, fringe benefits or any other factor have an economic basis. **A grievance strike** occurs when labour unions disagree with the way in which the management handles day-to-day problems such a discipline in a workplace.

**The wildcat strike** takes place without any warning. In this case the strikers take the employers' completely by surprise. During the strike no negotiations take place and the outcomes can be absolute chaos.

**A sympathy strike** is the situation where employees strike in support of labour unions' members who are on strike at another institution. Such employees do not necessarily sympathise with the strikers of other institutions, however, they strike with the expectation that they will in turn be supported at a later stage should they decide to strike.

**Sit-down and go-slow strikes** are the situations where employees refuse to leave the premises; they stay there in an attempt to prevent others from doing their work. Hence, in case of go-slows, employees may perceive the slowing down of work as a pressure tactic that is less

risky than a full strike. This often occurs when the relationships between management and labour unions have deteriorated. It may be more difficult for employers to take action against such behaviour, as it may not be easy to prove that the recession in production is due solely to the go-slow.

**A general strike** is the worst form and often results from a sympathy strike. It generally starts as an ordinary strike, which slowly gains impetus until practically all-economic activities grind to a halt in extreme cases. This type of strike can lead to a revolution aimed at overthrowing the government. During the year 2004, the Congress of South African Trade Unions (COSATU) undertook a general strike that was supported by the majority of public officials. The union demanded a wage increase of approximately 10 percent but the employer was prepared to offer only 7.5 percent.

A number of factors may cause strikes including general unrest, wages, domestic dispute in the working environment solidarity disputes, continual growth in workers' aspirations, and job security and safety. These are discussed below.

General unrest is not always easily perceptible, and may be regarded as a major cause of strike action. There is usually a general feeling of dissatisfaction with existing circumstances in society. Employees begin to form groups when unrest becomes noticeable, and the affair degenerates into an emotional issue that can eventually lead to a strike. Actions related to the above-mentioned situation were realised during June 2005 when COSATU was supported by the exploited working class of the south to mobilise for mass action to save jobs and fight poverty. The leadership of fourteen nations in the economic south met in Bangkok Thailand at the very moment of COSATU's determined general strike against the neo-liberal inspired attack on workers' rights in South Africa.

COSATU'S general strike showed that it was determined to continue to fight to defend hard won rights; that COSATU was determined that ordinary working men and women in the new South Africa must share in the wealth that they produce daily for the nation; that it will not rest easy until the government of the day, at every level in society, national, regional and local, recognizes that working people have the democratic right to have a voice and determine the conditions of their existence.

Wages is always an important factor although causes of strikes may differ from time to time. Thus, employees generally strike because they demand higher salaries than what their employers are willing to pay. Domestic dispute in the working environment might also lead to strike action in the sense that employees might often fails to distinguish between their working, domestic and social environment, for example, housing related problems.

They might bring frustrations to work, and they might expect their employers to assist to solve their problems. A solidarity dispute is another cause of strikes. In this case employers becomes increasingly aware of the value of their labour and of the effect of withholding it from what the employees can have. This realization is strengthened by the growing national strikes, for example, the opposition of privatization by labour unions such as the Congress of South African Trade Unions (COSATU).

Continual growth in workers' aspirations can also cause frustration because employers are reluctant to give them (employees) a say in matters that affect them. While employers considers themselves as the most important production factors, the employees consider labour as being equally important, and therefore demand sympathetic consultation.

Job security is another reason that could cause strikes in a workplace. There has been a shift in stress from wage as such to continuity

income and job security. Labour unions are demanding participation in decision-making processes that affect their security and benefits. When job security is threatened without any information being available as to the reasons for this, the labour movement questions the integrity of an institution that recognises labour union rights and then threatens its leaders.

### 3.3.5.2. Employees' participation

Participation is a political ideology that tends to incorporate all areas of employees' involvement and influence in an organisation, and might include joint decision-making bodies such as workplace forums. When referring to worker participation as a progression in the decision-making structures of an organisation, workers becomes especially empowered to either meaningfully affect decisions once they are taken, or to ultimately engage in a joint decision-making process with employers (Salamon. 1987: 256-257).

### 3.3.5.2.1 Objectives of worker participation

Worker participation allows employees the opportunity to either individually or collectively participate in or contribute to decisions and to the day-to-day activities of an organisation. Management opens the doors for and is able to accept the workers' ideas during the decision-making process. (Anstey.1997: 1). Worker participation has a number of objectives that include the ethical, socio-political, and economic. Each objective will now be described.

- Ethical or moral objectives

Worker participation allows employees to have influence on issues that have social and political impact on them (through democratic process). It also provides them with an equal say on other matters that have economical impact on them. Furthermore, the workplace does not only

provide employment and wages to employees, but has an equal impact on the security, self-esteem, happiness, health and wellbeing of employees.

Therefore, when employees are given the opportunity to participate in decision-making structures within an organisation they play an important role in the day-to-day activities of the organisation. The above-discussed matters give expression to economical rights and have a valuable role tin employee development, self-actualisation and dignity (Venter. 2003:441-442).

- Socio-political objectives

Worker participation could be seen as an extension of democratic principle into the workplace. In April 1994 South Africa's first democratic election took place and it brought an increase in pressure in the workplace to establish democratic processes and structures, and to involve workers at all levels of the decision-making process within their respective organisations. Thus workers should be involved when decisions regarding issues of mutual interest are taken, as well as issues that affect their conditions of employment and their economic well being (Venter. 2003: 442).

- Economic objectives

Organisations' effectiveness and efficiency affect worker participation. This results because a number of economic benefits are derived from employees' involvement during the decision-making process. This also contributes towards an increase in the quality and quantity of the outputs, and improves the profit margins. These include aspects such as an improved decision-making process, increased job satisfaction, a lower management to worker ratio, better labour relations, better commitment to quality improvement, and increased productivity.

### 3.3.5.2.2 Forms of worker participation

Worker participation covers a larger series of strategies; it can include participation at the top level of such employees. This different form of worker participation includes consultation, joint decision-making, co-management and self-management. These are given below.

Consultation is a process wherein an employer tends to draw out the employees' views on matters of mutual interest prior to making final decisions. But the right to make such decisions rests with the employers and it binds both parties.

Joint decision-making is the situation where employers and employees or their representatives engage in a process of reaching a mutual understanding. During the joint decision-making process employers no longer merely elicit the employees' opinions before receiving the right to make final decision, but rather let employees participate actively in the decision-making organs of the organisation.

Self-management structures empower employees to take decisions regarding matters of their work. Usually employees are authorised to manage some parts of their organisation. Thus, they form part of self-management teams that determine to solve problems within the organisation. Furthermore, they accept responsibility for their work, and are authorised to determine work practices and schedules (Venter 2003:448).

Financial participation is another form of worker participation in which employees are able to share the ownership and financial successes of an organisation. Financial disbursements are made for employees to work over and above their normal remuneration based on the distribution of profit, cost savings, and increased outputs. Furthermore,

employees can gain shares from their organisation. This is obtained through employee share ownership (Anstey.1997: 11-13).

### 3.3.5.3. Conciliation and arbitration

Conciliation may be defined as a direct intervention process wherein a third person plays an active role as a go-between and assists parties who are in dispute to resolve their differences and reach their own mutually acceptable agreements, and such a person is called a conciliator (Finnmore. 1999:249).

The conciliation process is triggered when a party in dispute decides to refer a matter for conciliation and this may occur at the point when they recognise that an impasse has arisen in their attempts to resolve their disputes. A number of reasons that may cause such a impasse include: having negotiations being delayed due to a deadlock reached, (usually during wage negotiations), or the lack of new ideas to give momentum to negotiations and to reach creative solutions.

The other reasons may include the gaps between employees' demands and employers' offers which may be so large that a conciliation process is needed to assist both parties to move from their bottom line positions. Lastly, one of the parties may require a third party (the conciliator) to convince their constituencies to move from their entrenched positions and thus enable the negotiations to retreat from a previously stated position without losing face.

Generally, the functions of the conciliation process are to create an environment which provides for clarification and focuses on the issues in dispute, and to improve communication channels between parties, to control the release of tension by allowing both parties to express their grievances and to explore the real interests of parties and maintain creativity in seeking alternative solutions.

It provides a more realistic view of the balance of power between parties, and is able to advise both parties on where a realistic settlement of the dispute lies. Furthermore, it provides a non-binding process to test their proposal with the opposing party without any commitment, should no final agreement be reached. Lastly, it provides legal advice and helps with the drafting of formal agreements that reflect the outcomes of any settlement (Finnmore.1999: 250).

Arbitration is defined as a direct intervention process whereby a third person, who is regarded as an arbitrator, plays a decisive role in dispute resolution between two parties through conducting a fair hearing of an argument and evidence, weighing it up and making a final decision that binds both parties (Finnmore.1999: 254).

The arbitration process is generally triggered when one party voluntarily decides to refer a matter to an arbitrator for final decision, and it generally occurs after the conciliation process has failed to resolve the dispute between employers and employees. It is mostly appropriate for resolving disputes over the employees' rights. Furthermore, it takes place outside the ambits of the courts and is generally conducted by people with formal legal training (Chandle 1996: 9-14).

Lastly, many countries prescribe arbitration as the best method to be used when resolving disputes of interest. It is an essential method where parties are prohibited from striking over issues such as salaries and conditions of services. Its outcomes are generally considered final and binding. But, provisions can be made in labour legislation for arbitration to be taken on review where an arbitrator was found to have committed misconduct (le Roux.1994: 28).

**Arbitration has a number of functions that include: to provide the employers and employees with the opportunity to promote and defend their rights, to maintain a fair hearing of a dispute facilitated by a well-trained, independent individual; to come up**

**with a valuable procedure for resolving disputes that has a built-in time frames for reaching finality; to come up with a binding dispute resolution mechanism; lastly, to provide effective methods to avoid unnecessary labour unrest (Finnmore. 1999:255).**

## 3.4     The practices of labour relations in South Africa

The practice of labour relations can take place in a number of ways, but for the purpose of this study, the focus will be on negotiations, grievance, and disciplinary procedure. These practices will be described below.

### 3.4.1  Negotiations

Negotiations are the coming together of parties in the employment relationship for the purpose of resolving their differences, and reaching a mutually acceptable outcome. According to Venter (2003.367) it can be affected by a number of factors from both internal and external perspectives.

### 3.4.1.1 Internal factors affecting on negotiations

Power, communication, and organisational culture constitute organisational issues that are fundamental to both the outcomes of negotiations and the negotiation process.

(i)     **Power** is regarded as the ability to influence someone. The employers exert enough influence to swing this power balance in their favour. For example, employers are providers of opportunity, work, and salaries, and they can control and manipulate financial resources. This situation will limit the available amount from which to pay their labourers. However, employees can exert their influence by threatening collectively to withhold their labour, affecting the population process and other issues in the workplace. The above situation will encourage

the negotiators representing their respective parties to be more sensitive of their potential and the ability to influence their oppositions (Venter. 2003:368).

(ii) **Communication** is a process that is equally vital to negotiations. It's about the ability of a particular party or individual to present a case coherently in such a way that a common understanding is reached. Furthermore, it comprises verbal communication that includes written and oral communication, and non-verbal communication, which include oral communication, kinesic behaviour, paralanguage, and object language. Each of these and their impact on negotiations will now be discussed.

(iii) **The oral communication** refers to spoken words, it determines the success of the negotiation process in the sense that it provides negotiating parties with the ability to structure and present their arguments effectively in a way that they are well understood. Written communication contains policy documents, memorandums, and letters, and provides an important source of information during negotiations. Kinesic behaviour is referred to as a "body language". Thus when the negotiator uses facial expressions these provide important cues to the party. For example, sitting rigidly with folded arms might indicate defensiveness.

(iv) **Paralanguage** is closely related to oral communication, and it concerns the way in which things are said. Tone and verbal inflections are good indicators of emotions and mood; for example, a raised voice indicates anger. Lastly, object language refers to the use of objects to enhance communication. The dressing code can serve as an important object. Negotiators may choose to dress according to the impression they wish to make on the opposing party and the tone they wish to set (McQuail.1984:77).

(v) **Organisational culture** comprises the values, norms, and beliefs of its members, and this fundamentally has an impact on the way in which things are done. The culture within every organisation can be communicated in a number of ways. For example, the culture of open communication, sharing information and collective decision-making becomes more beneficial to effective negotiations. An empowered culture will result in a greater trust between parties to the employment relationship (Venter. 2003:371).

### 3.4.1.2 External factors affecting negotiations

The external factor that affects the negotiation process includes the influence from the economic climate, political conditions and technology.

(i) **Economic climate** aspects such as inflation, interest rates, and wage levels have an impact on negotiation. The inflation rate is an average increase of prices on goods and services, and naturally, an increase in the inflation rate will cause employees to negotiate for a salary increase. Interest rates temper negotiations, thus they signal the cost of capital, and should it increase, it will result in a more viable investment as a substitute for capital, such as labour. Lastly, the level of wages together with average subsistence levels will contribute to different wage demands. Generally, both factors cause wages increases to escalate, and negotiations will either be co-operative or adversarial.

(ii) **Political conditions** have a profound impact on the way negotiations are carried out. For example, under the apartheid regime, the negotiation climate would have been adversarial with a small scope for compromise, while the present political distribution focuses on seeking consensus. This would affect the organisational structure that should reflect the broader political climate, and in turn has an impact on political processes (Venter 2003: 372).

(iii)    **Technology's impact** in the workplace has been profound, not least because of its role in facilitating the organisation. It is at once a threat or opportunity. Thus, it implies those who are challenged by technological advent and find their jobs becoming redundant. However, it presents an organisation with an opportunity to become more flexible and productive and enhance its capabilities both internally and externally. This implies that employees need to be equipped with the necessary skills so that technological advents could be considered during negotiation processes (Venter 2003:373).

### 3.4.1.3 The negotiating process

**This process has phases, namely; the preparation and discovery phase, the carrying out of the negotiation phase, and the arriving or outcome phase. These are discussed below.**

**The preparation and discovery phase** is the initial stage leading up to the actual negotiations. This phase entails that parties should have all the relevant information to facilitate good bargaining faith. This, of course, has implications for disclosure of information by organisations. Secondly, both parties should establish their own positions. This will enable them to enter negotiations on a "firmer footing", and be less susceptible to exploitations and deception. Furthermore, this will make employers' organisations glean an intimate knowledge of organisations' structure and financial resources. Finally, they should set up their objectives and establish the tone of their proceedings.

The **carrying out of proceedings** is the second phase, and it allows the parties to know each other, to clearly and un-ambiguously set out their position. During this phase, the setting of arrangements, semantics, and body language will provide important cues, and both parties will be able to measure appropriate responses.  Furthermore, they will present their argument, deal with it, and this will finally lead them to reach **consensus** as the third stage. During this phase a lot of

sacrifices and compromises are made in order to reach a win-win situation.

## 3.4.2  Grievance procedure

A grievance is defined as an occurrence, or a situation that justifies an individual lodging a complaint. Any organisation's management must realise that it is important to channel employees' complaints and grievances by means of some procedure before these grievances accumulate to such an extent that they are expressed by other forms of industrial conflict such as an increased accident rate, strikes, and high labour turnover (Ballot. 1996:306).

According to Ballot (1996:306) a grievance may occur in two categories, the contract violation grievance and the shop problem grievance. These are discussed below.

### 3.4.2.1 The contract violation grievance

This category occurs when employees' rights stated in the collective bargaining agreement are violated by their employers, which normally results from the employers' behaviour that lacks knowledge of the bargaining contract.  Moreover, the grievance may turn worse if both parties feel that their ideas and opinions are correct and are more important than those of the other party (Ballot. 1996: 306).

### 3.4.2.2 The shop problem grievance

This category occurs when employees present their complains in their workplace with an attempt to get their employers attention to address such problems. Therefore, such employees avoid debating over the interpretation of bargaining agreements and concentrate more on the employers' responsibilities over their workers.

The grievance procedure should ensure that full attention is given to a grievance to such an extent that, as they move through the organisational structure of suspension in the enterprise, it is eventually properly solved.

### 3.4.2.3 Prerequisite for a good grievance procedure

Nel (1989: 276) outline the following factors as prerequisites for a good grievance procedure.

- Both employers and employees should regard the dispute resolution system to be fair and just. If possible both parties must ensure commitment towards the formulation of such procedures.

- The procedures must be supported by formal, written, justified, and logical policies.

- A peaceful situation with high morale must be maintained before the system is formulated and introduced. This situation will create trust between employers and employees.

- All employees must be guaranteed of their rights to submit complaints, and necessary channels must be properly followed irrespective of the status an individual has.

- Employees must be guaranteed protection against being victimised by employers or any kind of circumstances when presenting their complaint.

- Finally, procedures must be easily understood and simple to adapt by any employee concerned, and actions must be taken without delay.

According to Rose (2000:545-546) a grievance procedure in practice takes place in a number of stages. The first stage is **the shop floor**, which includes the situation where the employee informs the supervisor verbally of the official grievance. Such supervisor will be expected to listen carefully, and should encourage such an employee to talk about his/her complaint. A decision on how to deal with such a complaint should be made immediately. If an employee is dissatisfied with the outcome, then the matter will be referred to the next stage.

**Formalising the grievance** is the second stage, when a complaint is recorded in writing and an employee (see Figure 3.1), his/her representative together with the immediate supervisor refer the matter to the next level of management. The high level of supervisors, taking into consideration its outcomes, will follow similar processes to those in the previous stage. The supervisors will immediately make a decision and notify both the complainant and the personnel department. If the complainant still feels dissatisfied, then the third stage comes in.

The third stage is **the top level,** and this occurs when the first written grievance form together with the report are included in the second grievance form, and are sent to higher management. It will then be discussed, and failure to reached satisfactory results will lead to the fourth stage, the **arbitration**.

This stage is when a formal, independent, and impartial grievance committee is convened to investigate the grievance and to give its decision. An expert in labour relations will be required to play a consultative and advisory role as an official member of the grievance committee. A ruling should be made in writing and be submitted or forwarded to the interested parties. If the employee still feels dissatisfied, the fifth stage will be introduced.

The fifth stage is the last step, where the top management receives all the relevant information derived from the informal problem-solving

level. The management will then discuss the matter, analyse the previous decisions, and make its own ruling. But if the outcomes are still unsatisfactory then the matter will lead to the external process, for example, referring it to the Centre for Conciliation, Mediation and Arbitration (CCMA).

POLICY NUMBER                    POLICY DATE


**GRIEVANCE SUBMISSION FORM**

TO:_____

DATE_____


    (Immediate Supervisor)


Person investigating a

grievance:_____


Designation:_____

_____


Employee's

representative:_____


Nature of

grievance:_____


Expected

outcomes_____


Employee's signature

_____

**Figure 3.1 Written Submission Form**

This form must be filled and submitted to the immediate supervisor by any employee who needs to file a grievance in terms of the second stage of the complaint resolution process.  The form must indicate to whom it is addressed, the date, the person investigating a grievance together with an employees' representative. Furthermore, it must indicate the nature of a grievance and the expected outcomes of the grievance. Finally, it is important for an employee to attach a signature for verification.

### 3.4.3  Discipline

Discipline can be viewed as orderliness, the opposite of disorder, and is essential in a workplace as it is in many other areas of the community. It does not imply rigid rules and regulations, but simply implies that people will work and act in a normal and orderly manner, as expected by any reasonable supervisor or subordinate (Nel. 2002: 245).

If the disciplinary process is correctly applied, it may contribute to the achievement of the organisation's objectives by ensuring cooperation amongst employees. However, if dealt with ineffectively, it might lead to management losing the respect and cooperation of employees and thus undermining the success of the undertaking (Rose. 2000:514-514).

An employee should be notified of the disciplinary hearing in advance by the supervisor before the hearing. The notice should contain at least the following information; the nature of transgression in terms of the disciplinary code, date, time, and place of inquiry, and the specific rights such as the right to an interpreter, to be represented by a fellow employee or labour union the right to call witnesses and to give evidence, the right to take the employee's case under cross-examination, and to state the case and defend it (Nel 2002.249).

**3.4.3.1 Related steps followed during a disciplinary hearing**

- The chairperson explains the objectives of the hearing.

- The validity of the hearing is established, an interpreter is offered and valid objectives of the employee are investigated.

- The initiator presents charges against the employee, who is given a chance to plea

- Employees will be allowed to cross-examine the witnesses and their evidence, and to state their own case

- Decisions are made over the employee's guilt or innocence

- If found guilty, the employee will be given a chance to enter a plea if mitigation is granted

- The chairperson taking into consideration the seriousness of the offence, and the extenuating and mitigating circumstances, and whether the disciplinary sanctions may not be contrary to the law, will take the final decision.

- All minutes and relevant documents will be filed after the hearing has been concluded.

- Finally, an employee has the right to appeal against any form of disciplinary action instituted against him/her if stipulated in a collective agreement (Nel 2002.250).

### 3.5 CONCLUSION

This chapter established the theoretical and principles-based co-ordination for readers regarding what was applied to shape the research design. Throughout this chapter numbers of aspects were described, and they include the defined labour relations, which were referred to as the dynamic complexities of the various relationships between parties to the employment relationship. Its background was also stated. The researcher identified and described various concepts and values in labour relations, and this included fairness and equity, power and equity, power and authority, rights and responsibilities, and integrity and trust.

**The laws affecting the employment relationship that will enable the reader to apply the present legislation that regulates the employment relationship in practice and to facilitate the understanding of the different structures that constitutes the system. Such legislation includes freedom of association and general protection, organisational rights, and collective agreements.**

The government, employees and labour unions, and their organisations are regarded as the major participants in the South African labour relations systems and their roles were described. There are factors that influence the labour relations in the workplace and there were also described.

Lastly, the researcher described the processes and the practices of labour relations and their relevant examples. Furthermore, a diagram related to a grievance submission procedure form as a process in labour relations was presented and explained.

**CHAPTER FOUR**

**THE PRACTICES OF LABOUR RELATIONS AT VISTA UNIVERSITY AND THE ANALYSIS.**

**4.1    INTRODUCTION**

This chapter deals with the practices of labour relations at Vista University. It will indicate the impact of the Labour Relations Act (Act 66 of 1995) between the employees and employers. There appeared to be many cases of unfair labour relations practices at Vista University from the year 1981 to 2003. Part B 2 of Schedule 7 of the Labour Relations Act states that unfair labour practice means any inequitable act that arises between employers and employees, involving a number of aspects such as unfair discrimination against an employee involving arbitrary grounds, including, but not limited to sex, colour, age, disability, religion, and others includes the unfair conduct of the employer relating to the promotion, demotion, and unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee.

But for the purpose of this study only a few selected cases will be identified and discussed. The background, survey of evidence, the award and the analysis of each individual case will be made. Cases to be conducted are based on failure to grant special study leave, changing of job titles for appointed applicants, and failure to pay the allowance of an incumbent an of acting positions.

A case study is an intensive study of a specific individual or context. It is a valuable tool in expanding knowledge and uses in-depth information obtained from multiple sources, and provides unique and valuable methods of eliciting phenomenon of interest to a particular topic. It has clear boundaries and includes context that is vital to

constructing a picture of the incident. Relevant information can be obtained mainly from basic sources such as interviews, observations and audio-visual materials.

Furthermore, the case study itself is important for what it reveals about the phenomena and for what it will present. Lastly, when conducting a case study, the case should be identified, it should be bound by place and time, the date must come from multiple sources and the report should include a detailed description of the context and setting.

## 4.2   Case No One.        Hoelson v Vista University

**Division - CCMA**                                    **Case no: EC 5044**

**Date- 17/April/1998**

**Unfair labour practice- benefits- Special study leave** *(Academic employee was entitled to special study leave even though he/she had been absent on ordinary leave, which she/he had accumulated.*

### 4.2.1  Background to the case

The applicant was employed by Vista University for more than ten years. For most of that period the applicant served as a Head of Department of Psychology. Heads of department ordinarily serve for a period of four years, after which they were granted special leave. It was common cause that the latest such period served by the applicant commenced in January 1994 and expired at the end of December 1997. It was also common cause that during the whole of 1997, the applicant was on study leave. The applicant argued that over and above such leave he/she was entitled to the so-called "special study leave" by virtue of completing a term of office as Head of Department.

Clause F17.1 of the Vista University's leave policy reads as follows: "after three years of uninterrupted service in a permanent capacity or following a period of study leave", special study leave may be granted on the following basis:

- Sixty working days accumulative vacation leave may be converted to twelve months study leave with commencement date of 1 January (Clause 17.1.a).

- Fifteen days accumulative vacation leave may be converted to three months study leave with commencement date 1 January, 1 April, 1 July, or 1 October, provided that the council approves the planned study (Clause F 17.1.i), or the council requires such an employee to provide a substitute who is acceptable to the council (Clause 17.1.ii), or an officer who is granted leave with full pay gives council an undertaking to serve the University for a continuous period of at least one year following the expiry of the leave, or is able to repay the gross salary on a *pro rata* basis should an employee resign during the latter period (Clause F 17.1.iii).

Clause F 17.2 of the policy provides that special study leave with full pay will be granted as follows to the employees concerned following a period of service; for a Head of Department or Dean, the period equals one University quarter, and for a Campus Director the period equals two University quarters.

### 4.2.2  Survey of evidence and argument

Both parties agreed that the matter fell to be resolved by way of reference to the above provisions and that it was essentially a matter of the correct construction to be placed upon those provisions. Neither party elected to present oral evidence. Vista University as the employer argued that the cumulative effect of these provisions was that an employee is not entitled to special study leave upon completion of a

term of ordinary study leave. The provisions of Clause F 17.1.d (iii) impose a duty on an employee to proceed to serve the university for a continuous period of at least one year following the expiry of the leave. Allowing an employee to take special leave immediately upon the expiry of the leave would counteract these provisions.

The applicant argued that what was contemplated by the provisions of Clause F.17.1.d (iii) is actual service, in the sense of the physical presence of the employee at the university, and the performance of the ordinary duties of such employee in the form of teaching or administration. With reference to the provisions of Clause F 17.2, the employer argued that these provisions contemplate special study leave being granted upon the expiry of a period of actual service as Head of Department. A period of service during that time did not include the period during the term of office when such a Head of Department was not actually attending his/her duties, by virtue of being on study leave.

Hence, the employee in this matter was to be regarded as not having completed a period of service as the Head of Department for the purpose of Clause F.17.2. And if the employee had served a full four years, then there would have been no problem and such leave would have been granted. Regarding the extension of employee's study leave by the period of his/her illness during the period of the study leave, the employer stated that its policies made no provisions for the conversion of sick leave into study leave, and that it was in the process of revising its conditions of employment, and that matter would only be addressed in the course of doing so. Furthermore, the employer argued that no entitlement to such conversion rose out of the existing conditions of service.

The applicant then questioned the relevance of Clause F 17.1.d (iii) and argued that he/she had given an undertaking to serve the university for a period of a year following the expiry of the leave, and that he had no intention of going back on that agreement. However, he

considered himself entitled to take special study leave by virtue of the explanation of his term of office as Head of Department. In addition the applicant contended that the effect of the construction argued by the University would be to deprive him of his entitlement to special study leave altogether.

Regarding the issue of sick leave taken during the course of the study leave, the employee acknowledged that he was not relying on any specific existing conditions of employment, but said that he had directed a request to the university, to which no response had been forthcoming until the date of the arbitration.

### 4.2.3 The award

The Centre for Conciliation, Mediation and Arbitration (CCMA) found that, upon the expiry of the applicant's term as Head of Department at the end of December 1997, he became entitled to special study leave in accordance with the provisions of Clause 17.2 of the University's conditions of service. Furthermore, it was agreed that should both parties be unable to agree within fourteen days from the date of the award on an alternative date for the commencement of such special leave, either party might apply for the matter to be set down for hearing the appropriate relief to be granted to the employee (http://butterworths.up.ac.za. 11/04/2005).

### 4.2.4 The analysis

According to Vista University's Policy and Procedure Manual Policy No: H04, amongst other conditions, special leave on full pay may be granted to an employee following the period of service as Head of Department, dean or the campus principal, but is not available during the last year of service, and for a head of department, up to (6) six months leave can be granted but only after serving the full term. This

situation is subject to the leave being taken in the subsequent University quarters that follow the expiry of the period of service.

But when analysing the evidence and argument of this case, a number of questions can be asked. Thus, whether an employee cannot proceed to take special leave immediately upon the expiry of a period of ordinary study leave.

Distilled to its essentials, this question tends to mean that one can attach to the following phrases "to serve the University for a continuous period of at least a year following the expiry of the leave" and "the period of service as a head of department in the respective clauses".

Furthermore, one wonders whether those phrases mean that an academic employee must physically return to his/her ordinary duties upon the expiry of their study leave? Does it preclude the applicant from serving the University by virtue of being on special study leave? Lastly, what does the draughtsman of the provisions intend to achieve by including such stipulations in respect of study leave?

It appears that those provisions were aimed at preventing academic employees from using a period of study leave simply as a convenient period of being absent from work on full pay prior to leaving the service of the University altogether. This would amount to the abuse of study leave, which must be considered to have a benefit not only for the employee, but also for the institution to which academic employees are attached, both directly and indirectly, not only by a way of the outcome of their studies, which are of importance to the standing of the University.

Though study leave accrues by virtue of past service to the University, it contemplates future benefits to the university, benefits that could be forfeited if the employee could terminate their services upon the expiry of the study leave. For this reason clause F.17.1(d) provides that

regular reports should be furnished regarding the research conducted by an employee during study leave, and provides that a certain amount of money should be paid to the University by the employee if he/she breaches obligations to serve the University upon the expiry period of the study. It also seems that these considerations do not by themselves preclude the taking of special study leave upon the expiry of a term of the ordinary study leave, since the fundamental objectives of the provisions would not be negated by that eventuality.

In conclusion an employee was entitled to special study leave based on the provisions of clause F. 17.2 of the University's conditions of service, but was refused. Such action reflected unfair labour practice. In this case the labour Relations Act had a negative impact on the employee-employer relationship at Vista University.

**4.3    Case No Two:  Vista University vs Ms Mothle**

**Division - CCMA Johannesburg                Case no. GA 130297**

**Date - 02/October/2001**

**Unfair labour practice -** *Changing of job title for appointed applicant*

**4.3.1  The Applicants' case**

The applicant's job title was changed without her consent and her representatives contended that despite efforts to engage the employer in correspondence, the employer showed no interest in resolving the dispute.

**4.3.2  Background of the case and the applicant's testimony**

The applicant was employed in the Information Management Department from 1 August 1999 as a Committee Officer. She then

applied for a position that was internally advertised as an Information Analyst, for which she was short-listed, interviewed and eventually appointed as an Information Analyst. She was surprised at a letter stage when she was informed that she had been appointed as a programmer. The applicant indicated that the title was new in their department, and colleagues became angry at her appointment because the programming post was supposed to be higher than being an analyst.

It was only afterwards when her appointment was carefully checked that she was downgraded. The applicant further took efforts to solve the matter by approaching the Director of the Information Management Department to obtain clarity. The director too was unable to explain why the title was changed and how it came about. Then the Director of the Human Resource Department was approached regarding the matter of and it was acknowledged that it was a mistake to change the grading and the job title, and this would be corrected within two weeks.

On the failure to correct to correct the mistake, the applicant went further and approached the labour relations officer who promised to speak to the Director of the Human Resource Department, but at that stage the answer changed. She was told that no corrections would be made and she could rather take the matter to court. The applicant tried to appeal against the decision but she failed to do so because the appeal forms were not available.

Soon after the applicant was told that corrections would not be effected and that she had the option of going to court, a letter was written to the Director of the Human Resource Department, but no response was forthcoming. Unions were also contacted for the purpose of addressing the problem but this failed because the Human Resource Department claimed to be too busy since all this occurred at the point when the university was closing for recess.

### 4.3.3  The witness's testimony

The witness was an employee at the University for a period of four years as a Director and Head of the Department of Information Management. He testified that he attended the applicant's interviews and agreed that the applicant should fall in the grading of Information Analyst due to her qualifications and experience skills and the workload. He also stated that the applicant was not a programmer but had passed the information analyst's test. Furthermore, the witness testified that the Human Resource Department did not have the civility to show him that the applicant was a programmer. Letters were written to the Human Resource Department stating that the applicant was hired as an Information Analyst and a number of meetings were also held in an attempt to resolve the matter but these did not succeed.

### 4.3.4  The respondents' case

The respondent testified without calling any witnesses. He testified that the applicant was appointed as an Administrative Officer B in the Department of Information Management and had accepted the position. All professional and administrative positions were graded according to the job evaluation manager systems. The applicant's position was graded and a job level 7 was allocated to her position. The outcome of the job grading was that her salary was lower than the minimum of the salary band.

To correct the situation the applicant's salary was adjusted. The respondent submitted that it was clear that the applicant benefited through the job grading exercise. Job grading letters were sent to all professional and administrative staff members, and it was later found that members doing the same jobs were graded on different levels.

A bargaining forum meeting was held between labour unions and the Human Resource Department, and the department was requested to

investigate the applicant's problem. The campus principal and the departmental directors also met to discuss the issue of grading and had to send out revised job grading letters to applicable members who were advised to appeal if they felt dissatisfied about their grading.

Furthermore the Department of Human Resource investigated the issues of job grading and met with the campus principal and departmental directors, and submitted the report to the Executive Management Committee for a decision. The committee then agreed that staff members from the Department of Management Information and Information Technology should be re-graded.

### 4.3.5  The award

It was conceded that the respondent committed an unfair labour practice by changing the job title of the applicant to that of Programmer from Information Analyst, which was the position for which she had applied and was appointed to. The respondent was also ordered to appoint the applicant to the position of Information Analyst as being the position she was initially appointed to, and to pay her all the benefits, which she would have been paid arising out of the position of the Information Analyst from the time of appointment. Furthermore, the order was expected to take place within fourteen days of the recipient of the award, and there was no order of charges (CCMABitmap. No 957.4/October/2001).

### 4.3.6  The analysis

It was a common cause that the Vista University's Human Resources Department internally advertised the position of Information Analyst. The applicant applied for the position, was short-listed for the interview, and was appointed to the position. The applicant was at a later stage sent a letter by the respondent stating that she had beenappointed as a Programmer, which was a different position to the one she applied for.

It was a dispute that was continually engaged regarding the problem and has undertaking to rectify the same. But the problem was still not rectified during the time of the referral of the dispute to the Centre for Conciliation, Mediation and Arbitration (CCMA).

The applicant agreed to their evidence that the referral of the dispute to the CCMA was triggered by the respondent's reluctance to resolve the problem though he initially promised to do so. The last straw was when the respondent informed the applicant that it was not going to correct the problem or rectify the situation and she had an option to refer the matter to the court of law.

The employer's representative failed to challenge the relevant aspects of the applicant's evidence, but rather conceded that there was willingness on the part of the respondent to correct the problem. Under cross-questioning the respondent conceded that it was irregular for a candidate who was appointed as an analyst to be assigned duties of a programmer.

According to the applicant's evidence, the level and status of a programmer was at 7 (seven) whereas the position of information analyst was higher than that of a programmer which was at level 6 (six). This indicated that the applicant's job title from an information analyst to that of a programmer amounted to demotion. The respondent did not challenge this.

The respondent acted unfairly and did not show any intention of rectifying his mistake, taking into consideration the witness's testimony that the applicant was not a programmer but rather an information analyst and when the respondent was informed that the applicant was aggrieved by the change in the job title, he insisted that the matter be solved and the grading reflect what the applicant really was.

The testimony further stated that a consultant was appointed to do the job grading, and during that process the witness was able to pick up a number of discrepancies and was verbally informed by the consultant that corrections would be made. Furthermore, each time the consultant made similar undertakings, the mistakes were never corrected, and there was never further communication between the two due to the consultant's unavailability.

Lastly, the respondent also did not show any intention of solving the matter since he did not provide any appeal forms to allow the applicant to appeal. The discrepancy in appointing the applicant at a wrong position was acknowledged by the respondent who undertook to correct the situation, but a period of one year passed by and nothing was done.

The applicant had the right to be placed at the position that she was appointed for. She was supposed to be protected by the Labour Relations Act (Act 66 of 1995). But the employer denied her such protection. This simply implies that the Act had a negative impact on the employer-employee relationship.

### 4.4    Case No three:    Masithela vs Vista University

**Division - CCMA Johannesburg**            **Case No. FS 936**

**Date - 26/May/1998**

**Unfair labour practice –** Benefits - *Failure to pay incumbent of acting position allowance normally attached to the post-unfair in the absence of prior consultation with an employee.*

### 4.4.1 Background of the case

The applicant alleged that the employer had committed an unfair labour practice by failing to pay him the acting allowance normally attached to the post during the 12 months in which he had acted as a Campus Director. He contended that although his letter of appointment made no mention of an acting allowance, he had a legitimate expectation of receiving it as a permanent incumbent as the post was given an allowance; specific provision was made for the payment of allowances to acting personnel. The employer contended that the Committee of Campus Directors had agreed that the acting allowance payable to the acting campus director should be shared equally amongst its members, and that the applicant had performed his duties collectively with other members of the committee.

### 4.4.2 Survey of evidence and argument

The applicant testified that while he was a lecturer at Vista University, he was appointed as acting Campus Director by the letter dated 26 April 1995 issued by Chairman of the University Council. Upon his appointment, the applicant expected to receive the Acting Campus Director's allowance of R 2 315 per month. The applicant stated that, although his letter of appointment did not mention the allowance, he had a legitimate expectation of being paid that money because there were already precedents of other Acting Directors being paid allowances; he had additional responsibilities over and above his duties as a lecturer; paragraph 2(b)(i) of Policy Document No 11 of the University's Conditions of Service for Officers and Employees stipulates that a locum-tendency allowance equivalent to the Campus Director's allowance should be payable if an officer acts for at least one calendar month as a Campus Director.

The applicant said that he was the sole representative of the campus at the Vista University's head office (Pretoria). He had powers to sign all

official documents emanating from his branch, sat on panels which made appointments, gave reports to the head office concerning the activities happening within his campus, represented the campus in academic and administrative forums, and was charged with the day-to day management of the campus.

The applicant further testified that, after his appointment, he was paid an allowance of R 406 per month instead of R 2 315 per month. Prior to that he complained about the underpayment to the Vice-Chancellor, the Committee of Campus Directors and its Chairman, but to no avail.

### 4.4.3 The employers' response

The employer's case was that in 1995 a Local Transformation Forum (LTF) was elected at the applicants' campus by all stakeholders to run the day-to-day activities of the campus. The applicant was among the stakeholders and was given the signing power. The committee members acted collectively and the applicant did nothing on his own. The respondent stated that when the committee was first appointed the members did not expect to receive any remuneration but it was later agreed that each should be paid an equal share of the Campus Director's allowance of R 27 783 per annum.

The applicant denied that he was present at the meeting when such an agreement was made, and the employer's witness could not confirm whether the applicant attended or not. The witness testified that the LTF acted collectively as interim management of the campus, but conceded that it did not act as Campus Director. Besides, the applicant was only regarded as Acting Campus Director because he had signing powers, and the Council also accepted him. The witness went further to state that when the applicant was away from campus the committee collectively performed his functions.

The employer argued that the applicant had no legitimate expectation of being paid an acting allowance of R 2 315 per month. In addition, a letter dated the 26 April 1995, which purportedly ratified his appointment as Acting Campus Director, did not clearly stated his terms and conditions of employment, therefore guidance regarding his remuneration had to be sought elsewhere. The employer argued that, according to the University's policy, the council, has the discretion to decide how much to pay, and determines locum-tenancy allowances. The employer further argued that, in pursuance of this power, the Council determined the applicant's acting allowance to be R 406 and later R 450 per month and had communicated its decision to the applicant by a letter issued by the Chairman of the Council. Consequently the employer argued that the applicant knew that he would receive an acting allowance of R 406 and that the Council had decided to give him a smaller allowance because he performed his duties collectively with other members of the LTF.

### 4.4.4  The award

It was concluded that the conduct of the employer was unfair relating to the provision of benefits to the applicant therefore the employer must pay him a compensation R22 223 not later than Friday 19 June 1998. Furthermore, no order was made as to costs (http://butterworths.up.ac.za. 04/April.2005).

### 4.4.5  The analysis

The employer's conduct amounted to an unfair labour practice within the meaning of item 2(1)(b) of Schedule and of the Labour Relations Act (Act 66 of 1995) "*the unfair conduct of the employer relating to the provision of benefits to an employee*". In this case the employer was supposed to have paid the applicant compensation equivalent to the allowance he received.

According to the applicant's evidence, the applicant was initially appointed as acting Campus Director, and the chairman of the University Council signed the appointment letter. The letter did not set the applicant's remuneration package. Hence he had to refer to the University's policies to ascertain what additional remuneration, if any, he would receive for his services. The evidence forwarded indicated that the letter issued to the applicant was clear and unequivocal, and must have left the applicant in no doubt that he was an Acting Campus Director. Furthermore he was even paid a certain allowance for several months while his LTF colleagues were not paid.

If the Council had the intention of revisiting the question of the applicant's locum-tenency allowance, it ought to have held prior consultation with the applicant, but no evidence was led of this having been done. The Council failed to defend its position again by not being able to forward a single witness to explain how the applicant's locum-tenency allowance was determined. The decision to divide the Campus Directors' allowance equally among the LTF members seems to have been made long after the council had decided to pay the applicant an allowance of R406 per month. Furthermore, it appears that both decisions were made without any consultation with the applicant or giving him a hearing even though the decision was prejudicial to his interests and should not have been taken without giving him a fair opportunity to be heard.

The above situation indicates that the Council did not observe the obligation which the labour law places on deciding authorities to act equitably and observe the rules of natural justice. Therefore, the conduct of the employer was unfair relating to the provisions of benefits to the applicant. In terms of item 4 (e) of Schedule 7 of the labour Relations Act (Act 66 1995) the employee applicant deserved to be paid compensation equivalent to the full Campus Director's allowance he would have received during his locum-tenency as an Acting Campus Director.

### 4.6.  Conclusion

Throughout this chapter the researcher applied a case study method, because it is a valuable tool in expanding knowledge. Thus, it uses in-depth information obtained from multiple sources. Its analysis allows the observer to render a social action in a manner that comes closest to the action understood by the actors themselves. However, its power lies in its ability to challenge the order of things, and in this case it allowed deeper investigations into the impact of the <u>Labour Relations Act</u> (Act 66 of 1995) at Vista University from the year 1981-2003. Among the cases of unfair labour practice that took place at Vista University, only three were identified and explained in this chapter. The three concern the refusal to grant special study leave; the changing of an appointed applicant's job title; and refusal to pay an incumbent the acting position's allowance. Lastly, the researcher stipulated and provided the time, place, the background, testimony, and the awards of each case.

**CHAPTER FIVE**

**RECOMMENDATIONS AND POSSIBLE SOLUTIONS**

**5.1     Introduction**

This chapter deals with recommendations on and possible solutions to how the Labour Relations Act (Act 66 of 1995) can impact positively on the employer-employee relationship at Vista University. A number of recommendations to are to ensure that the above-mentioned Act has a positive impact on labour relations within the Institution. The recommendations include creating a relationship side to labour relations, managing conflict between employers and employees, maintaining effective communication, promoting ethical behaviour, and ensuring collective bargaining. These are summarised below.

A number of employers claim that it is important to create a good relationship with their employees, but it appears they are not aware of a suitable type of relationship to establish. Many institutions, including Vista University developed a fear of their employees and decided to act so strictly to the extent that they deny their employees their rights, for example, freedom of association and the right to join labour unions. Such employers believe that unions have a bad influence on their staff and can encourage them not to behave according to their employers' expectations.  As a result the employers create a strict relationship with the staff and avoid interaction with them. The only meetings conducted are with their union representatives although the employers try to keep their employees from joining such unions. This situation hinders good labour relations because the employees are unable to express their grievances, aspirations, needs and suggestions.

Employers should rather try to maintain a collaborative type of relationship with their employees because this would encourage and

promote cooperation and joint-problem solving processes in the workplace. Furthermore, accusations of suspicious behaviour, manipulations, propaganda, and threats will be avoided.

Differences in ideas, needs, goals, values and expectations cause conflict situation between employers and employees in the workplace. These differences can easily lead to misunderstanding, poor employee-employer relationships, strikes, and destructive conflict. In order to maintain an effective relationship in a workplace, the employer should focus on the aspects related to possible causes of conflict and the techniques used resolve such conflict. The employer must be aware that perceived unfair allocation of tools, materials, supplies and other resources may cause conflict in the workplace and must often make hard choices as to "who gets what" and "how much?" If such decisions can be made openly and fairly, employees will be more likely to accept available resources allocated to them.

The employer must keep all employees calm and reassured of the future situation in the workplace. A lack of stability in the institutional operations stimulates conflicts because change is a part of any institution and is difficult to adapt to. Furthermore, some employees do not trust any situation which forces them to undertake what they are not prepared for. Therefore, the employers must provide strategies to resolve such problems, for example, training their employees about the need for change and what change entails, how it will occur and specifying who will be affected by such change. As a result this will keep them calm and reassured and will promote an effective employer-employee relationship in a workplace.

The employer has the responsibility of removing mistrustful behaviour in the employees in order to avoid damaging over the productivity unit and personal relations in the workplace, because a growing sense of mistrust and personal differences between the employees and the employers may result in a conflict situation in the workplace.

Furthermore, individual background, education and experience may cause differences between individuals and their views play a mayor role during conflict situations. These differences have a negative impact on labour relations within an organisation. Lastly, changes in a workplace may imply change in employees' status. This may encourage the experienced employees to develop territorial rights. Because they perceive change as detrimental to their status, some may feel that they should resist external forces, for example, a new supervisor, new colleagues or any other change in which they did not participate or contributed towards and this resistance may hinder labour relations in the workplace.

The employer must also ensure that he/she applies principles of conflict resolution subjected to the Labour Relations Act (Act 66 of 1995) in a fair way. Techniques for containment of conflict namely, avoidance, accommodation, forcing, compromise and collaboration can be applied to resolve a situation.

 The Labour Relations Acts states that employers and employees have the right to freedom of information. This implies that there should be an effective communication process that binds an institution together. The two parties must reach each other by the sharing of ideas, facts, feelings and values. They must enjoy their rights, for example, freedom of expression and express their opinions. Such rights must be extended to the employees by preventing them from violating employees' rights and abusing their powers and this will result in avoidance of tension.

Employers must avoid judging their employees during the communication process. Judging the other party is unfair and it is easy to form wrong opinions about them. Furthermore, misjudgement could make communication impossible because those who are judged inferior may not feel accommodated by their employers. This may result in poor labour relations between employers and employees.

Lastly, employers must avoid misleading their subordinates and employees because it may lead to loss of trust by employees of their employers and manipulative to behaviour that will hamper effective labour relations in the workplace.

Furthermore, employers must develop a vision of a desirable future through examining past experiences, the present situation and the future goals. They should ensure that information is spread widely and its vision is communicated to all the staff members in the workplace. A report back is necessary during the communication process because misunderstanding might arise if there is no feedback. Even if the receivers provide a positive report back, the sender may feel the need to undertake further communication because receivers may be impatient and alternatively provide a positive answer with the intention of ending the communication.

Promoting ethical behaviour among all stakeholders may contribute to effective labour relations in a workplace. Ethics is a process in which people clarify what is wrong and right. It involves the means and consequences of moral behaviour and it is analysed in terms of how individuals behave when performing their daily activities. Therefore, ethics is voluntary since people can choose whether to behave in a good or bad manner. In order to maintain good labour relations the labour relations practitioner must have knowledge about what ethics is, its causes and measures to prevent unethical behaviour and such knowledge must be extended to employers and employees.

The practitioner must encourage transparency in the workplace because lack of transparency promotes secrets, which can cause unethical behaviour such as mal-administration and fraud. As such cooperation between employers and employees will be destroyed and this will affect the future development of the institution.

Accountability should be maintained because it promotes open debates and it creates a forum for discussing matters of great importance in a workplace where employees can tackle employers about the activities in the workplace. Accountability should be broadened to the extent that all the employees and the employers who were proven to have committed an offence and failed to account for their actions face punishment, for example, being forced to resign or being expelled. Any employee who was found guilty of any wrongful action is unfit to represent any organisation regardless of whether a fine paid or not.

A code of conduct can also be used to ensure good labour relations because its objectives include encouraging and maintaining responsible behaviour among employees and employers. The codes should include guidelines to ethical behaviour and related values that can be used in ethical dilemmas and in explaining changes in the workplace. Vista University, just like other institutions, has a code of conduct and should this be applied to all stakeholders, with strict measures being taken against the offenders.

Collective bargaining also plays an important role when maintaining employer-employee relations because it is a voluntary process of reconciling the conflict of interest and aspirations between employers and employees. It enables the two to reach a meaningful agreement through a process of mutual concern where they will assume a willingness not only to listen to the other, but also to abandon their fixed position in order to find common ground and to reach agreement expressed in terms of a contract that specifies the nature and the extent of the worker management relations. Furthermore, labour relations practitioner must have knowledge of the real purpose and approaches of collective bargaining and be able to inform all the stakeholders involved about such processes.

## CHAPTER SIX

## CONCLUSION

In this study the researcher provided a brief overview of Vista University's Human Resource Department and how its Labour Relations Section was established. The successes, failures and need for the University's Human Resource Department's existence were described. A comparative analysis of Vista University's Human Resource and that of the University of Pretoria was made. Furthermore, a number of strategies to improve the functioning of the Department were also explained.

The research methodology was comprehensively described to clarify the different research methods available.  The significance of the study, the problem statement, research question and the limitations were also described. Qualitative and quantitative research methods were described and the adopted research method used during this research was indicated and its reasons were explained.

An overview of labour relations was conducted which covers the definition of labour relations and the selected concepts and values of the Labour Relations Act (Act 66 of 1995) and the legislation affecting the employer-employee relations. Factors influencing the labour relations in the workplace, for example, socio-political variables and the economic variable were described. Collective bargaining and employees' participation are examples of the processes of labour relations in South Africa and these were described. The researcher identified the government, employees and labour unions, and employers and their labour organisations as the participants in the South African Labour Relations System, and these were also described. Lastly, the practices of labour relations in South Africa, for example, negotiations, grievances procedure and discipline, were described.

The practice of Labour Relations at Vista University from the year 1981-2003 was described in order to indicate the impact of the <u>Labour Relations Act</u> (Act 66 of 1995) on the employer-employee relations. There were a number of cases reflecting unfair labour relations practices but only a few selected cases were identified and discussed. The background, survey of evidence, the award and the analysis of each individual case were made. The selected cases were based on the employers' failure to grant special study leave, changing of job titles for appointed applicants without their consent, and failure to pay the allowance of acting positions. The analysis of these cases reflected actions of unfair labour relations practices at Vista University and the <u>Labour Relations Act</u> (Act 66 Of 1995) did not impact on the employee-employer relations at Vista University. Lastly, recommendations and possible solutions to the above-mentioned situations were described.

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