

Chapter 2

2.0 THE IDENTIFICATION OF MISCONDUCT IN SCHOOLS

2.1 Introduction

The school is an organisation with a formal group of people performing a well-defined and organised work to achieve a specific goal or objective (cf. Figure 2-2). Where people come together for the purpose of working together, there should be sound human and working relations. These relations are referred to as labour relations (du Plessis, Fouché & van Wyk 1998:375-376). In the education public sector, labour relations are regulated by the Labour Relations Act, (LRA) (No. 66 of 1995).

The purpose of the LRA (No. 66 of 1995) is to promote peace, social justice and democracy in the workplace, more especially when it comes to the appointment of educators. It also strives to regulate fundamental rights, while affording the employees and the employer the opportunity to bargain collectively. The LRA (No. 66 of 1995) aims at enabling the employees to take part in the decision-making in respect of labour matters and to make it easier for the employer and the employees to resolve labour disputes (section 1(a)-(d) of the LRA, No. 66 of 1995). This Act applies to all employees except those in the Defence Force, Intelligence and Secret Service (section 2(a)-(c) of the LRA, No. 66 of 1995). When interpreting the provisions of the LRA (No. 66 of 1995), constitutional values and principles as well as international law should be taken into consideration (sections 3(a)-(c) of the LRA, No. 66 of 1995).

In spite of the fact that it applies to educators, the LRA (No. 66 of 1995) does not protect educators who commit misconduct. Instead, it gives guidance as to how human resources managers should deal with those educators who contravene provisions of the Acts, and it also gives them guidance as to how to adhere to the code of good practice (Sch. 8, items 1-7 of the LRA, No. 66 of 1995). Moreover, it gives direction as to how educators should go about embarking on a proposed strike (section 64(1) of the LRA, No. 66 of 1995).

The intention of this chapter is therefore to identify misconduct and insubordination inside and outside the school premises, and it also aims at looking into the provisions of the Constitution, the Acts and the Regulations that are contravened by the educators. The focus will mainly be on the Employment of Educators Act, more especially section 17(1)(a)-(n) of the EEA (No. 76 of 1998) which enumerates all the facts to be considered when handling misconduct cases. The fundamental rights of the educators and the employer as enumerated in the provisions of the Acts, the Constitution and the Regulations will be discussed while paying attention to the limitation of both the employees' and the employers' rights as set out in section 36(1)(2) of the Constitution (No. 108 of 1996).

This chapter will also focus on industrial actions or labour protests and the politics practised by some of the educators on school premises, because Chapter 2, regulation C.3.7 of the Public Service Act Regulations (PSA Regs) (No. R. 1091 of 1999) prohibits an employee from party political activities in the workplace. When reference is made to teachers' unions whose members participate in politics during working hours, it must not be construed as if this research project is against educators exercising their political rights. After all, section 19(1)-(3) of the Constitution (No. 108 of 1996) clearly spells out that every person has the right to participate in politics.

2.2 Transgression of codes of conduct

2.2.1 Dishonesty

The word dishonesty is defined in terms of the information gleaned from available literature as the stealing of an organisation's money or property, absenteeism, falsification of records, dodging work or loafing, not honouring the starting or stopping time and abdication of responsibility (Carrel *et al.* 1995:320-321, Anthony, Perrewé & Kacmar 1996:254-255, Ivancevich 1995:240-241, French 1994:234). In the light of the foregoing assertion it can be said that dishonesty is when an employee deviates intentionally from performing normally in accordance with operational procedures, or when an employee unlawfully and secretly removes the property of the organisation for the purpose of possessing it, or when an employee tampers with the official documents so that he/she can gain financially.

Dishonesty is a cause for concern in the American private sector. It is because of this reason that human resources managers in America once relied on pre-employment honesty tests before an employee could be appointed in a vacant post. In 1988, however, America discontinued the use of pre-employment tests after it was discovered that it was violating human rights, such as the right to be employed, the right to privacy, and the right to confidentiality. The object of the test was to detect whether an applicant was honest or dishonest (Ivancevich 1995:241).

Carrel *et al.* (1995:321) argue that it is difficult to say whether dishonesty is a personal trait or whether it is caused by the situation in which the employee finds himself or herself. With regard to dishonesty that manifests itself at some schools that were controlled by the erstwhile DET, it can be said that dishonesty is caused among others by situational factors or variables. With the advent of the new institutional and educational dispensation in 1994, dishonesty abounded and became prevalent at schools due to the laissez-faire type of attitude which was created by the political struggle against the dissolved National Party government (cf. paragraphs 1.1 & 1.2).

The different scenarios at some schools in South Africa support the foregoing assertion. Jordan (1998:7) reported that in Khayelitsha outside Cape Town, an educator stole money earmarked to buy tracksuits for learners. The stolen money was collected by this educator from parents. The action of this educator smacks of dishonesty which impeded human and labour relations which are contemplated in section 1(a)-(d) of the LRA (No. 66 of 1995). In addition to this, it can be said that the loss which was incurred as a result of the stealing of the money caused animosity between the educator in question and the parents. In this regard, Anthony *et al.* (1996:255) maintain that if dishonesty is not given prompt attention, organisations whose employees are dishonest will lose a lot of money or property to theft.

In South Africa dishonest employees have no place in the private sector in general and in the education public sector in particular. It is for this reason that the Employment of Educators Act (EEA) (No. 76 of 1998) was legislated as an act of parliament in order to regulate matters pertaining to the employment of educators. For instance, an educator shall be guilty of misconduct if he/she is found to be dishonest in terms of section 17(1)(e)(h)(i)(m) of the EEA (No. 76 of 1998), which stipulates that an educator shall not absent him/herself from school or duty without leave or a valid reason, or undertake any private agency or private work in relation to a matter connected with the carrying out of his/her duty without permission of employer, or be negligent or indolent in the carrying out of the duties attached to his/her post.

Despite the above stipulations educators are still displaying dishonesty. For example, some educators who marked and controlled the Grade 12 external examinations at the end of 1998 forged their qualifications. In this regard, Pretorius (1999:2) reported that some educators who were appointed to mark Physical Science and Mathematics were being investigated because it was alleged that they were not qualified to mark and control the Grade 12 learners' scripts. According to the report, one of the educators who was appointed, failed the Grade 12 Mathematics Standard Grade, while the other two educators falsified qualifications and submitted false documents to the examination section. Falsification of documents is dishonest, and it also constitutes misconduct in terms of section 17(1)(a)(b)(i)(j) of the EEA (No. 76 of 1998).

Dishonesty has permeated some of the former DET schools to such an extent that some educators attached to these schools have lost control over the learners. As a result they do not enjoy teaching, and this leads to their displaying unprofessional behaviour such as chalk downs, bunking periods, loafing and issuing learners with fraudulent examination reports. All these smack of dishonesty which constitutes misconduct in terms of section 17(1)(j)(k)(m) of the EEA (No. 76 of 1998). The dishonest educators steal school stamps and copies of report forms from the principals' offices. In the case of female learners, these fraudulent reports are exchanged for sexual favours, while male learners buy them (Mbhele 1990:12). Mention must be made that sexual intercourse with a learner as well as deceiving a learner by giving him/her marks that he/she does not deserve is in conflict with paragraphs 3.6 and 3.10 of the SACE Code of Conduct (Boshoff & Morkel 1999:4-10).

Apart from selling fraudulent reports to learners, the examination papers are also sold to learners long before the examinations are written, thereby contravening section 17(1)(j) of the EEA (No. 76 of 1998), and Chapter 2, regulations C.4.5 and C.5.3 of the PSA Regs (No. R. 679 of 1999) (Mulaudzi 1998:2, Seeger 1997:2). Falsification of examination results and the stealing of examination papers have a negative impact on labour relations within the school as an organisation, because mistrust is likely to exist between the culprits and the school management teams (SMTs). Moreover, it must be noted that forging documents and records constitutes reason for dismissal in terms of section 17(1)(a)(b)(g)(j)(n) of EEA (No. 76 of 1998) in the education public sector should an educator be found guilty of misconduct.

2.2.2 Drunkenness

Alcohol is a substance which has a devastating impact on the performance of an employee who abuses it. An alcoholic is faced with the problem of abusing family members, losing friends and colleagues, suffering psychologically and emotionally, squandering money and ostracism by their peer group (Carrel *et al.* 1995:599). An alcoholic is a problem for the human resources manager in the workplace. A study conducted in America shows that an employee indulging excessively in liquor has work related problems. Among others it can be mentioned that alcohol abusers absent themselves continually and unlawfully from work, and this practice has been found to be detrimental to human and labour relations among the employees (Fitz-enz 1995:192).

The problem of alcohol abuse is not only limited to the employees in the private sector, but it is also common to the public education sector. In South Africa, some of the educators attached to schools that were controlled by the erstwhile DET, abuse alcohol thereby contravening section 17(1)(h) of the EEA (No. 76 of 1998), which stipulates that an educator shall be guilty of misconduct if he or she is under the influence of intoxicating liquor or stupefying drugs, while on duty or acting in an official capacity. More importantly, as a professional, an educator should at all times behave professionally, and adhere to the code of conduct as enumerated in paragraphs 3.7 and 3.10 of the SACE Code of Conduct (Boshoff & Morkel 1999:4-9; 4-10).

In spite of the fact that it is against the law for an educator to report for duty under the influence of alcohol, reports abound that there are still some educators who come to school under the influence of alcohol. For example, an educator attached to one of the schools in Masilo township near Theunissen in the Free State frequently came to school reeking of alcohol. When confronted by the principal, he admitted verbally and in writing that he had consumed alcohol before reporting for duty each morning, and he always apologised for doing this (PS File EMIS 42908239:1999).

Official documents of the school furthermore reveal that intoxicating beverages have a negative impact on the work and the well being of this particular educator. He does not for instance report regularly for work, he does not complete mark sheets as well as the mark schedules when learners have written quarterly tests or examinations. When controlling the professional work of the educators, the principal discovered that this educator neglected learners throughout the year,

hence all the learners he taught failed his subjects. The educator was warned several times, but he never improved his behaviour (PS File EMIS 42908239:1999).*

Shiba (1999:6) noted that educators who go to school under the influence of alcohol, act in conflict with section 17(1)(h) of the EEA (No. 76 of 1998), which forbids educators from reporting to work under the influence of intoxicating beverages and stupefying drugs. According to him, they go to schools drunk and they leave schools for home before the end of the school day. As a result of this, learners are seen milling about in the dusty streets of the townships and supermarkets during school hours. This practice is so conspicuous that in one educators' conference the then deputy president of the ANC, Mr Mbeki, gave the offending educators a tongue lashing (Khumalo 1998:3).

Educators who excessively consume liquor carry out their responsibilities with low levels of commitment. This leads to low productivity, low morale and a high failure rate (Matseke 1997:12). Excessive consumption of alcohol by an educator has a negative impact on the management of schools in general and human relations in particular. In terms of the SACE Code of Conduct, paragraphs 3.1 and 3.3, an educator should respect the learners and he or she should also inculcate societal values in learners while allowing them access to education (Boshoff & Morkel 1999:4-9; 4-10). An alcoholic does not perform his or her duty the way he or she should, instead he or she violates the right of a learner as catalogued in section 29(1)(a) of the Constitution (No. 108 of 1996), namely the right to basic education.

2.2.3 Gross negligence

Subject to section 3(1) of the South African Schools Act (SASA) (No. 84 of 1996), it is compulsory for learners to start schooling at the age of seven years and remain at school until the age of fifteen years or the day on which he or she completes the ninth grade. With regard to the ages of compulsory attendance at schools for learners with special education needs, the minister of education must determine this by way of publishing it in the *Government Gazette* (section 3(2) of SASA, No. 84 of 1996). In the light of the foregoing exposition, it becomes clear that the learners from sixteen years to eighteen years are not compelled by law to attend school.

* The name of the educator is not used. The information can be retrieved from this file, using this number at the Odendaalsrus District Office.

It is also of vital importance to note that it is required by the SASA (No. 84 of 1996) to admit a learner to Grade One if he or she turns seven in the course of that calendar year and it is expected of him or her to complete Grade Twelve at the age of eighteen (Boshoff & Morkel 1999:2B-63). This means that the school going learners are still children who must be protected from maltreatment, neglect, abuse or degradation (section 28(1)(d)(3) of the Constitution, No. 108 of 1996). A child is not only to be protected, but he or she must also be cared for by his/her parents (section 28(1)(b) of the Constitution, No. 108 of 1996).

In the absence of parents at school, an educator acts in *loco parentis*, and he or she is therefore expected to protect and to take care of school going learners (Oosthuizen 1994:55). This could be done if he or she refrains from ill-treating, neglecting, abusing and degrading a school going learner (section 28(1)(b)(d)(3) of the Constitution, No. 108 of 1996). The protection contemplated in section 28(1)(2)(3) of the Constitution (No. 108 of 1996) is construed to be the psychological and physical protection of the learner by the educator in the classroom, outside the classroom, during breaks, as well as during excursions. This implies that the conditions and the situation a learner is exposed to should be free from factors that may harm him or her physically and psychologically.

The learner's right to education as contemplated in section 29(1) of the Constitution (No. 108 of 1996) must be protected by the educator. This could be done if the educator plans and prepares his or her lessons which must be taught daily to the learners. It is unacceptable for the educator to withhold the examination results of the learner for one reason or another, or to award marks to learners without marking their scripts. The handling of the examinations matters should be taken seriously because examinations are an integral part of education. If examinations are ineffectively managed, the right of learners to education as contemplated in section 29(1) of the Constitution (No. 108 of 1996) is jeopardised.

Similarly, sections 10 and 12(1) of the Constitution (No. 108 of 1996) make mention of the dignity and the security of the learners which must be protected. The above-mentioned sections of the Constitution should be considered before an educator could embark on any action that may be detrimental to the well-being of a learner. Violation of the Constitution by an educator may expose a learner to hazardous conditions and situations. In terms of section 17(1)(d) of the EEA (No. 76 of 1998), an educator who does not take care of learners and protects their rights may be charged with misconduct.

It is reported that at the end of 1996, a high school educator in Atteridgeville near Pretoria tortured learners psychologically by not issuing them with their end of year examination results because he did not mark scripts or prepare the mark schedule and learners' reports (Sowetan Reporter 1997:4). This was viewed in a serious light by parents of that school because the action of that educator constituted gross negligence.

The educator neglected the most important task which is the final product of what he and the learners had been doing throughout the year. Leaving the learners in the lurch at the last minute suggests that there was something this educator was hiding. It could also mean that the educator neglected the learners throughout the year and that he knew that the examination results would expose him.

In terms of the political system, South Africa was an abnormal country with an abnormal society, hence the struggle against the former government (cf. paragraphs 1.1 & 1.2). During the political struggle schools were turned into battlefields while learners were neglected by educators who fought the then National Party government. For instance, at one of the high schools in Soweto near Johannesburg educators embarked on an indefinite chalk-down. During that period, the neglected learners gambled in the dilapidated school building. Some played football in the classrooms, while others played cards and games of dice (Makoe 1991:6, Khupiso 1991:1). As the result of the gross negligence to which the learners were subjected, today they go to schools late, and they smoke dagga in full view of their educators (Mecoamere 2000:3, Thulo 2000:4).

In South Africa, some educators encroach on the learners' time by holding meetings during teaching time. These educators do not take cognisance of the fact that their rights are not absolute (section 36(1)(a)-(e) of the Constitution, No. 108 of 1996). It is for instance, a tendency for some educators affiliated to SADTU to hold meetings during school hours. One such a meeting was held by Durban township educators in the city hall. The learners were therefore neglected. Some of the neglected learners were seen shopping and strolling on the beach, while others enjoyed alcohol at the local licensed restaurant (Shiba 1999:6). In the light of the above, it becomes clear that gross negligence by educators led to learners abusing alcohol and drugs.

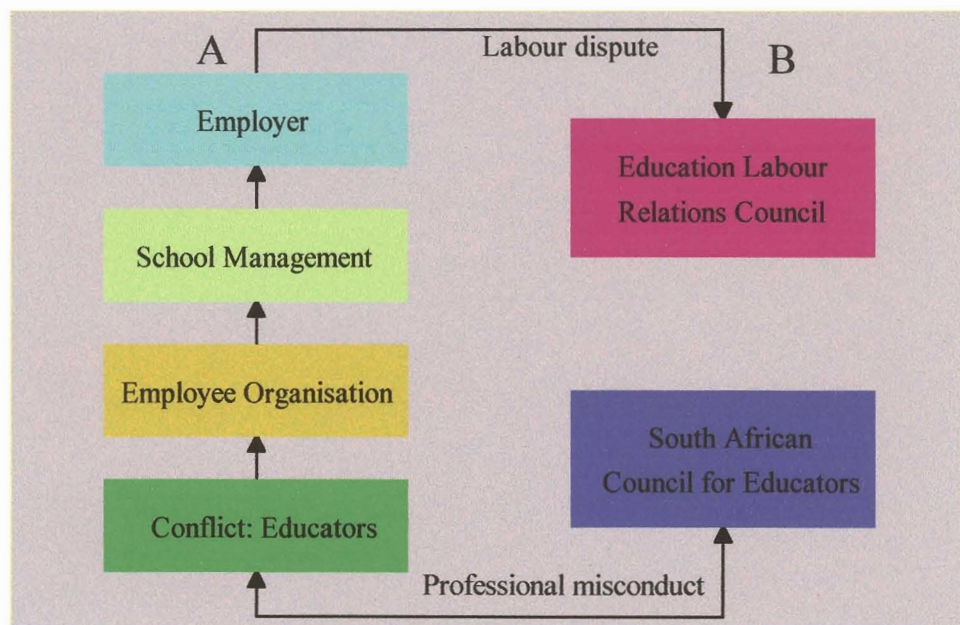
Mokone (1996:17) expresses anxiety that black children who have been neglected by educators for a long time have become a menace to the South African society. Explaining the events that took place in the black townships on the East Rand, Mokone (1996) blames educators who

neglect and use learners as political pawns. According to him, learners who are affiliated to the Congress of South African Students (COSAS), aligned to the African National Congress, and those who are affiliated to the Azanian Students' Movement (AZASM), aligned to the Azanian People's Organisation, interfere with the learning and teaching processes, while at the same time their political activities have an adverse impact on the management and human relations (Teleki 1994:9-11).

2.2.4 Persistent idleness and absenteeism

It is expected of the employee and the employer to maintain sound social and working relations because they interact formally and informally in the workplace. These relations are regulated by the LRA (section 1(a)-(d) of the LRA, No. 66 of 1995). Conflict within the school as an organisation is resolved by the management of the school, educators, employee organisations and the school governing body. External agencies like the Education Labour Relations Council and the South African Council for Educators may also resolve disputes that may have arisen within the school (Sch.1, item 2(1) of the LRA, No. 66 of 1995 & section 28(e)(f) of the EEA, No. 76 of 1998). The diagram below shows the structures that could be used when resolving conflict.

Figure 2-1: The conflict resolving structure



The above Figure 2-1 distinguishes two types of disputes that may occur at school level namely disputes on labour and professional misconduct issues. Columns A and B show the typical paths that labour disputes and professional misconduct disputes may follow. Alleged contravention of the professional code of conduct may be referred to SACE by the school

Absenteeism and idleness are potential causes of conflict in schools. An educator who is persistently absent from school lowers the morale of other educators who regularly report for duty. He or she also impedes sound working relations that may exist between the management of the school and himself or herself (Cuming 1993:360-361). Absenteeism means that learners are not attended to, tuition hours must be increased, extra work must be given to other educators, and a high failure rate at the end of the year must be expected. The above-mentioned is true if an educator spends many idle hours just sitting in the staff room or basking in the sun (Khupiso & Pretorius 1998:4).

It is acceptable for an educator to be absent from school if there are valid reasons like ill health and authorised leave by the employer. Educators who absent themselves from duty for no valid reasons contravene section 17(1)(m) of the EEA (No. 76 of 1998). It has been however noticed that there are some educators who absent themselves by feigning sickness while others are idle while on duty. Bierman (1998:11) observed that half of the educators in Mpumalanga around Ermelo do not report for duty on Mondays. He furthermore noted that these educators arrive at the workplace a few hours before the end of the school day, while others leave the schools on Fridays as early as ten o'clock in the morning. According to him, the rural schools are worst hit by this practice. At these schools educators do not report for duty on Mondays as well as Fridays. Bierman (1998) reported that in one of the rural schools an educator slept for the entire day on the Monday at the school with the instruction that no one should disturb him.

In Khayelitsha outside Cape Town an educator spent eighteen months at home receiving her full pay. This particular educator absented herself from work in spite of the fact that she was instructed by the authority to go to work (Jordan 1998:7). In some schools formerly controlled by the then DET, educators do not start with teaching at the beginning of every term. The schools where this is practised are not effective (Rees 1996:18, Mabunda 1998:4). In addition to this it must be mentioned that educators who practise this are guilty of misconduct in terms of section 17(1)(m) of the EEA (No. 76 of 1998), in that they absent themselves from school without leave or a valid reason.

2.2.5 Fighting on the school premises

Fighting is as bad as the abuse of intoxicating beverages, absenteeism and idleness. Fighting within the school affects productivity and the organisational climate and culture of the school. Aggressive behaviour and friction within a school cause stress which leads to educators blaming one another for any problem that may exist at a school. Aggression creates fear and frustration among educators, and this has a negative impact on societal values, norms and human relations (Cascio 1995:554). In situations where educators are fighting amongst themselves, professionalism is likely to be eroded (cf. paragraphs 1.5.8 & 1.5.10).

Fighting within the school ranges from fist-fights, stabbing, sexual assault and to the use of firearms (Khupiso & Pretorius 1998:4, Jordan 1998:7, Malefane 1999:1-2). It is incumbent upon the human resources managers at school level to prevent fighting. When appointing educators, precautionary measures should be taken. A principal of a school should have sound knowledge of human resources management because this could help him or her to inculcate zero tolerance of fighting among his or her staff members. Professionalism should at all times be instilled in educators. Above all, a principal should act promptly when he or she hears or realises that there is tension between educators (Byars & Rue 1997:511, Cascio 1995:554).

Fighting on school premises is becoming increasingly common. Khupiso and Pretorius (1998:4) report that educators attached to a school in Daveyton on Gauteng's East Rand fought amongst themselves. The reporters' informants maintain that the cause of the fight was that one of the educators instigated learners to throw eggs and tomatoes at other educators of the same school. They furthermore informed him that the problem was compounded by the appointment of another educator as a principal, not the instigator. Apparently, the instigator was the favourite of some of the educators of that school (Khupiso & Pretorius 1998:4).

In section 17(1)(b)(c)(g) of the EEA (No. 76 of 1998), it is clearly spelt out that an educator who engages himself or herself in fighting is guilty of misconduct, because an educator is someone who is supposed to be a role model to the learners. If an educator engages him/herself in bad behaviour like fighting, learners are likely to think that fighting is the norm or acceptable standard of living that is to be imitated and emulated. The fighting in which the above-mentioned educators engaged, negatively affected tuition and meaningful learning in that learners were

neglected by educators of that school for a period exceeding a year (Khupiso & Pretorius 1998:4).

An educator who fights another educator, more especially on the school premises, is contravening paragraph 3.7 of the SACE Code of Conduct which stipulates that an educator must use appropriate language and behaviour in his/her interaction with learners, and that he/she must act in such a way as to elicit respect from the learners (Boshoff & Morkel 1999:4-10). In the light of the foregoing stipulation, it becomes clear that the above-mentioned educators and a Kayelitsha principal who slapped an educator in the presence of her forty Grade 1 learners flouted the SACE Code of Conduct (Jordan 1998:7). In addition to this, it can also be said that the conduct of the Daveyton educator and that of the principal of Kayelitsha constitute reasons for dismissal (Grogan 1997:115-116).

Human and working relations are important aspects of management which need to be given serious attention. Should human and working relations be managed ineffectively and inefficiently, fighting which can result in killing, is inevitable. Ineffective management of human and working relations may lead to the collapse of discipline as is the case with some schools formerly controlled by the now defunct DET. An educator who gunned down three educators in the staff room at a school in Soweto outside Johannesburg is a case in point. According to the report, the killer educator made threats before the actual killing, and his threats were reported to officials of the Department of Education who did nothing about them (Malefane 1999:1-2).

In the light of Malefane's (1999) report, it was clear that there were bad working relations between the killer educator and the rest of the staff members, including the principal of that school. According to the report, the killer educator would even absent himself from work without any valid reason, but steps were not taken, though it is explicitly stated in section 14(1)(a) of the EEA (No. 76 of 1998) that an educator is deemed to be discharged if he or she absents himself or herself from work for a period exceeding fourteen consecutive days without the permission of the employer. The deduction which is made with regard to lack of discipline at some schools formerly controlled by the then DET, is that there are management problems at various levels of management of the education system in South Africa (cf. paragraphs 2.2; 3.2; 4.2 & 5.2).

2.2.6 Drug abuse

Drug abuse by employees in South Africa needs attention more than ever before. Since the inception of the democratic government in South Africa, illegal immigrants have flocked to this country with great expectations of finding jobs, some with bad intentions as well. Many of them came to this country to sell drugs such as *cocaine*, *mandrax*, *opium* and *khat*. It is on record that *khat*, which is being illegally smuggled into South Africa by Ethiopians and Somalis, is chewed openly on the streets of Johannesburg, in full view of everybody including the police who seem to be unaware that what is being chewed is indeed a drug (Smillie 2000:7).

From what is regularly reported in print and via the electronic media, it becomes clear that the laissez-faire and tolerant attitudes towards drugs which were ushered in with the new dispensation increased the rate of drug abuse among the people of South Africa including the educators. Thulo (2000:3) reported that an educator attached to a high school in Umlazi, South of Durban, smokes dagga with his principal on the school premises. According to the report, the school has a dagga smoking room where drugs are sold by thugs who enter the school premises freely, in the process abducting school girls for the purpose of raping them. This practice prompted the School Governing Body (SGB) to file a case of misconduct in terms of section 17(1)(h) of the EEA (No. 76 of 1998) against the principal, the school security guard and the educator.

It must be mentioned that in terms of section 17(1)(e) of the EEA (No. 76 of 1998) it is an offence which amounts to misconduct to sell dagga on the school premises. Subject to the provision of the foregoing section educators are prohibited to undertake any private agency as is the case with the above-mentioned principal and one of his educators, and it is also against societal norms and values to sell dagga at school.

The selling of dagga on school premises is also prohibited by section 21(1)(a)(b) of the Drugs and Drug Trafficking Act (No. 140 of 1992). In terms of this section, a person may be guilty of an offence if (s)he is found in possession of dagga exceeding 115 grams in or within any school grounds or within a distance of 100 metres from the confines of such school grounds of any dangerous dependence-producing substance; or is found in possession of any undesirable dependence-producing substance, other than dagga.

Section 21(2) of the Drugs and Drug Trafficking Act (No. 140 of 1992) defines a "school" as any educational institution, except a university, college of education or a technikon, where full-time education, including pre-primary education, is provided to pupils; and subsection two of section 21 of the Drugs and Drug Trafficking Act (No. 140 of 1992) furthermore defines "school grounds" as a land, whether it is contiguous or not, buildings or accommodation, sporting or other facilities used for or in connection with the activities of the school.

The above-mentioned educators contravened section 17(1)(d) of the EEA (No. 76 of 1998) in that they were negligent or alternatively indolent in the carrying out of their duties attached to their posts and this resulted in the learners falling prey to drugs and thugs. The smoking of dagga by educators on the school premises, even outside the school, has a negative impact on discipline, and this action also has a negative effect on the administration of the school and, as such, the educators were liable to a charge of misconduct in terms of section 17(1)(b) of the EEA (No. 76 of 1998).

Apart from having a negative effect on the management and leadership of principals, the abuse of drugs has detrimental effects on family life and on the mental well being of the user. Using drugs excessively can also cause depression and psychological disorders such as a psychosis which is common among those who abuse drugs (Smillie 2000:7). Research conducted in America shows that the use of drugs in the workplace decreases performance of employees and as such productivity is adversely affected. In addition to an adverse impact of drugs on productivity, it was discovered that drug users steal whatever can be sold from the workplace, so that they are able to buy drugs (Sherman & Bohlander 1992:443).

The findings of the research conducted in America proved to be authentic because the principal mentioned in the foregoing paragraphs seems to be psychologically affected by dagga to such an extent that he saw nothing wrong with the smoking of dagga with his educators and learners, and he referred to dagga as a holy herb. It must also be mentioned that the smoking of dagga by the principal contributed to the mismanagement of the school funds, and in the hearing which was held at the school, the principal refused to hand over the financial documents to the governing body of the school. This he did in the presence of an officer from the circuit office of the Department of Education. Another charge levelled against the principal was that he was no longer effectively managing and leading the school (Thulo 2000:4).

Educators smoking dagga with learners is becoming prevalent in some of the schools that were controlled by the former DET. An educator attached to a school in Kutlwanong near Odendaalsrus in the Free State is a case in point. This educator belongs to the Rastafarian religion and he comes to school every day attired in Rastafarian clothes. At times he comes to school barefooted and smelling of dagga. It is notable that the educator has formed a reggae music group and Rastafarian movement with learners with whom he smokes dagga. Together with these learners, he comes to school wearing dreadlocks.

At one stage he was confronted by parents who wanted him to stop involving learners in the Rastafarian religion but he refused to do so. He even told the School Management Developer (SMD) in charge of the school that he was not going to stop promoting the Rastafarian religion because section 15(1) of the Constitution (No. 108 of 1996) clearly spells out that everyone has the right to freedom of conscience, religion thought, belief and opinion (SP File EMIS 42908239:1999).*

As set out in section 28(1)(d) of the EEA (No. 76 of 1998), the SACE has established a code of professional ethics for educators registered with this council. It is therefore imperative for educators to acknowledge the fact that teaching is a noble calling, and that they should behave in such a way that they work and interact harmoniously with the learners and their parents. In terms of the SACE Code of Conduct, it is expected of an educator to act in such a way that he or she is respected by the learners and it is also imperative that educators must recognise parents as partners in education, and that they must behave in a way that will enhance the dignity and status of the teaching profession.

The educator mentioned above did not comply with the code of professional ethics for educators as contemplated by the SACE Code of Conduct in that he smoked dagga with learners. In addition to this, he contravened section 17(c)(g) of the EEA (No. 76 of 1998) in that he refused to stop his involvement in the Rastafarian movement and the involvement of learners in this movement. Secondly, he is also liable to a charge of misconduct, in that he behaved in a disgraceful, improper and unbecoming manner on duty by being discourteous when talking to the principal and the SMD.

* The name of the educator is not used, instead this number is used. The information can be retrieved from the file at the Odendaalsrus district office.

The smoking of dagga at the school mentioned above had a negative impact on the behaviour and moral values of the boys and also on the well being of the educator. Sometimes the educator can be mistaken for a lunatic because of his hair style, by going to school barefooted as well as by the camouflage clothes he wears when coming to school. This educator is not in any way a role model for the learners.

Official documents revealed that his performance in the classroom had deteriorated to such an extent that he was given the Lower Grades which are very important because it is here where the foundation is laid (SP File EMIS 42908239:1999).^{*} The school to which this particular educator is attached, performed worst where in the 1999 Grade 12 end of year examination in the Free State. For instance, out of 121 matric learners, only 30 learners managed to pass the examination i.e. the school obtained a 24.79% pass rate, and as such, rendered itself to be classified by the national minister of education Kader Asmal under the dysfunctional schools (Pretorius 2000:2).

2.3 Misconduct stemming from protest actions

2.3.1 Illegal marches, chalk-downs and strikes

Chapter two of the Constitution is characterised by democratic principles and values. These are the noble features of the Constitution of South Africa because the rights of everyone in the country are enshrined in this chapter. Section 23(2)(a)(c) of the Constitution (No. 108 of 1996) affords union members the opportunity to defend their rights. Subject to the provision of section 23(2)(c) of the Constitution (No. 108 of 1996), employees affiliated to a recognised trade union have the right to strike. This right assists unions *inter alia* in protesting against unfair dismissal and labour practices, appalling work conditions, and to demand salary increases.

Points related to the right to strike are catalogued in section 64(1)(a)-(d) of the LRA (No. 66 of 1995). In the case of the private sector, trade unions must give the employer at least forty eight hours' notice in writing of the commencement of the strike (section 64(1)(b) of the LRA, No. 66 of 1995). In the case of the public sector, the employer shall be given at least seven days' written notice of the commencement of the strike (section 64(1)(d) of the LRA, No. 66 of 1995).

^{*} The name of the educator is not used, instead this number is used. The information can be retrieved from the file at the Odendaalsrus district office.

The strike must be organised in accordance with section 3(1)-(3) of the RGA (No. 205 of 1993). For instance, the majority of the members of a union must vote in favour of the strike, using a secret ballot. Union representatives must inform their members that for the period they embark on the strike, there will be no remuneration (section 67(3) of the LRA, No. 66 of 1995).

Mention must also be made that it is illegal for union representatives to force other members to engage in strike action (section 8(10) of the RGA, No. 205 of 1993). Despite the provisions of this Act, it is a common practice for some unionised educators to engage in illegal marches, chalk-downs and strikes (Javiva 1999:2). In terms of regulation 5(1) of the RGA (No. 205 of 1993), it is not permissible for education employees to riot and to damage personal and government property during marches or strikes. It must be noted that the rights to strike are limited. For instance, if an agreement has been reached to call off the strike, the employees must honour the agreement. It is also expected of employees who render essential services or a maintenance service to refrain from embarking in the strike (section 65(1)(d)(i)(ii) of the LRA, No. 66 of 1995).

The phrase "essential service" is extremely important and refers to a service which is necessary. Teaching and educating children who are tomorrow's nation is extremely important. Section 65(1)(d)(i) of LRA (No. 66 of 1995) does not protect the right of learners to education if essential service does not refer to the service rendered by educators. Some educators deny learners the right to basic education, by engaging in illegal strikes, marches and chalk-downs (section 29(1)(a) of the Constitution, No. 108 of 1996). It seems as if some educators do not take section 36(1) of the Constitution (No. 108 of 1996) into consideration when they take the decision to embark on protest action.

Learners are abandoned by unionised teachers during labour actions. An illegal strike disrupts schooling, thereby affecting the management of schools and human relations of the school community. According to Javiva (1999:2) learners in some of the Gauteng schools showed discontent following educators' illegal strikes. They for instance, complained that the educators' strike was affecting preparations for the final year examinations. Monama and Makunike (1999:2) hold the view that parents and community leaders are not in favour of educators' illegal strikes, chalk-downs and marches. According to them parents are not impressed by the Act that affords educators the right to strike. Parents and community leaders called for the amendment of

section 71(10) of the LRA (No. 66 of 1995) to include educators as those who are identified as rendering essential services.

2.3.2 Unauthorised time off

In terms of sections 15(1) and 82(1)(p) of the LRA (No. 66 of 1995), union office bearers and workplace forum members are entitled to time off which enables them to perform their functions as representatives of employees. A union office bearer is an employee employed to work for the employer. So is the case with someone serving in a workplace forum. In addition to his or her normal work, it is expected of him or her to do work related to labour relations. It is difficult, if not impossible, for the union office bearers and the workplace forum members to cope with both their normal and their union duties. It must be noted that the provisions of the subsections mentioned above exclude other employees who are not serving as office bearers or on the workplace forum (Boshoff & Morkel 1999:3c-85 - 3c-87).

In light of the provisions of sections 15(1) and 82(1)(p) of the LRA (No. 66 of 1995), the functions of the union office bearers and workplace forum members are among others, collective bargaining; negotiations and or consultations with management; meetings with an employee and an employer concerning labour relations; discussing disciplinary matters with the employer and the employee; attending training sessions; observing whether interviews are conducted in accordance with the procedures laid down in the resolution adopted in the Education Labour Relations Chamber. Union office bearers and workplace forum members, shall adhere to the time off regulations; and they shall not exceed the number of hours agreed upon. Permission from a person authorised to allow time off must be produced on demand by the line function managers (Boshoff & Morkel 1999:3c-85 - 3c-87).

As has already been mentioned, only the employee organisation's office bearers and workplace forum members are accorded an opportunity to do work related to labour matters during school hours. Employees who are entitled to time off should know that, before such time-off can be granted, the person responsible for granting it must be given a reasonable period of notice. It must be made clear that meetings with other educators should be held after school or during break. Union representatives must avoid interrupting the teaching and learning process, for this will be against the principles of the Culture of Learning, Teaching and Service (COLTS). The

hours that have been utilised for time off must be recorded in the register kept for this purpose (Boshoff & Morkel 1999:3c-85, 3c-86).

To exceed the period agreed upon in the Education Labour Relations Chamber, and to encroach on teaching and learning time, constitute misconduct because it is the learners' constitutional right to be taught under conditions that are conducive to learning (section 29(1)(a) of the Constitution, No. 108 of 1996). It is, however, not uncommon for union representatives to release learners without the consent of principals as early as ten o'clock for the purpose of attending meetings. This is done even if permission has not been granted by a person designated by the employer to grant time off (Shiba 1999:6). Union representatives also carry out union's duties during school hours without any permission. This practice is serious because it adversely affects learning, teaching and management of schools as well as labour relations.

An educator attached to one of the schools in Masilo township near Theunissen in the Free State is an office bearer of the SADTU regional branch. This educator has a tendency of absenting himself from work without even informing the principal or completing the time off register before he takes leave. On his return from his unauthorised leave, when asked by the principal where he was, he would simply tell him that he was attending an urgent union meeting. When requested to produce a letter which authorised his time off, he would fail to do so. With the intention of reprimanding him, the school governing body called him to a meeting which he refused to attend. The subject he teaches is suffering because of his regular absenteeism (SP File EMIS 44008151:1999).*

2.3.3 Hostage taking

The word hostage is not found in the lexicon of the Labour Relations literature. This word is in fact used when someone has been captured, or a person who has been held in a hijacked aeroplane, or when a captured person is kept in a house, office, shop or whatever the building or place may be. The person is kept hostage till such time as the demands of a person who keeps him or her are met (Reuters 1999:15). The people who make use of this tactic or strategy are often political protesters or terrorists who threaten the government of a country for their own reasons. In order to solve labour problems, some educators still use any tactic they deem fit,

* SP File EMIS 44008151:1999. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (District 18, Free State Department of Education).

including hostage taking. By using hostage taking, they emulate and imitate political protesters to force the employer to meet their demands (de Wet 1997:4).

It is, however, not surprising to realise that some educators do use hostage strategy to solve labour problems because education in South Africa is highly politicised (Teleki 1994:1-4). Using hostages as a strategy is a sign of the militancy that is present in the politicised educators who express their political will in this hostile action. Educators who use a hostage strategy to induce a response from the employer are liable to a charge of misconduct because there are strategies that are accorded by the provisions of the LRA and the Constitution that may be used by educators instead of hostages (sections 17; 23(1)(b)(c) of the Constitution, No. 108 of 1996). Though it is their right to embark on protest actions such as strikes and assembly, educators should bear in mind that their rights are not absolute (section 36(1) of the Constitution, No. 108 of 1996).

It is reported that educators in one of the Free State schools in Hoopstad held an education officer hostage. The reason for doing this was that the school to which the educators are attached was forced by the shortage of accommodation to share premises with another school for six years (de Wet 1997:4). The system whereby two schools share premises is known as the platoon system. The school which has no premises of its own normally uses the afternoon session at the host school (Maseko 1993:7). The Hoopstad educators who used hostage taking as a strategy to force the employer to meet their demands did not consider the fact that hostage taking could affect labour relations negatively.

In the case of the Hoopstad incident, it must be noted that before the officer was held hostage all the avenues for solving accommodation problems were explored by educators. They, for instance, used labour actions like strikes and boycotts to pressurise the provincial government to erect a building for their school. The amateurish company which was given the contract could not cope with the work. This led to the work being abandoned much to the frustration of the educators who convened a meeting with the education officer in charge of the school, under the pretence that they were going to discuss the management of labour relations. Upon arriving at the school, the educators held the education officer hostage, using all sort of threats, including intimidation (de Wet 1997:4).

Be that as it may, the crux of the matter is that holding officers hostage constitutes a reason for dismissal because this action does not befit a professional. In addition to this, it can be said that by taking the officer a hostage, the educators denied him his constitutional rights, in that they infringed upon his dignity, freedom of movement and privacy (sections 10; 12(1)(a) & 14(d) of the Constitution, No. 108 of 1996). In terms of section 7(1)(2) of the LRA (No. 66 of 1995), the officer who was representing the employer had the right to be protected against unfair labour practice. The classroom in which the educators held the officer hostage was used unlawfully because it was not meant for holding individuals hostage. The action of these educators was tantamount to misconduct, an unfair labour practice and a criminal offence.

2.3.4 Illegal demonstrations and insulting slogans

It is the labour unions' prerogative to defend their rights which are catalogued in sections 23(1)(f) and 5(1)-(4) of the LRA (No. 66 of 1995). Human dignity, freedom, security, expression and environmental protection which are the rights of an individual are also entrenched in sections 10 and 16(1) & 24(a) of the Constitution (No. 108 of 1996). The dignity of every employee and employer should be protected. This is possible if each employee and employer is treated as a human being in the workplace. Both the employee and the employer must feel safe to execute their duty. The workplace should accord the employees freedom of speech.

Labour unions have the right to assemble with the intention of demonstrating or picketing (section 17 of the Constitution, No. 108 of 1996). It is incumbent on the labour union to make the necessary arrangements prior to any assembly envisaged by that union. An assembly which is not permitted is regarded as illegal (section 3(1) of RGA, No. 205 of 1993). There are members of labour unions who assemble illegally, while at the same time they use abusive language or insulting slogans. It is a truism that freedom of speech is allowed in the workplace, but the provision of the Constitution forbids the employee to abuse it (section 36(1) of the Constitution, No. 108 of 1996). It is against the law to incite and to create hatred that is based on race or ethnicity because this constitutes a cause to harm (section 8(5)(6) of the GRA, No. 205 of 1993).

Employees or union representatives normally use assemblies to demonstrate or to petition an employer who fails to address their grievances or demands in the workplace. The objective of a demonstration is to pressurise the employer to address the employees' demands or grievances. In terms of section 17 of the Constitution (No. 108 of 1996), a demonstration should be peaceful

and those who participate in it should be unarmed. During the demonstration, the procedures enumerated in section 8(1)-(10) of the GRA (No. 205 of 1993) shall apply to the conduct of gatherings and, where so indicated, to the conduct of demonstrators. The provisions of the above-mentioned sections of the Constitution and the RGA seem to be ignored by educators when demonstrating. The unionised educators in Allanridge in the Free State are cited as an example. These educators assembled illegally with the learners in front of the Odendaalsrus District Office to demonstrate (Seloane 1998:1).

The officer of the Department of Education, who is in charge of the planning of school buildings, was forced to receive the memorandum. The educators and the learners chanted insulting slogans, and they swore at the officer. The educators instructed the learners to force open the locked main door to the entrance of the offices. The learners tried in vain to open the door. This demonstration was not peaceful. The slogans on the placards carried by the educators were insulting education officers.

Upon his arrival, the District Manager for education was intimidated and greeted with boos and jeers (Seloane 1998:1). The dignity, physical integrity, honour, reputation or privacy and security of education officers were threatened by these educators whose actions constituted misconduct and an unfair labour practice because the physical planner (the education officer) was not given a chance to state his side of story or to defend himself (Sch. 7, item 2(1)(a) of the LRA, No. 66 of 1995).

The conditions of gatherings and demonstrations were not observed by the convenors of the gatherings. During the protest demonstrations whose intention was to force the government to increase the salary of the educators by the percentage desired by unions, ethnic, racial and sexist insults were hurled at the Public Service and Administration Minister Geraldine Frazer-Moleketi by the members of the labour unions (Mecoamere 1999:1). By behaving and acting in this fashion, section 8(5) of the RGA (No. 205 of 1993) was contravened. The provisions of this section stipulate that no person present at or participating in a gathering or demonstration shall incite hatred of other persons or any group of other persons on account of differences in culture, race, sex, language or religion.

2.3.5 Malicious damage to property

Damage to property occurs when a person "wrongfully and through his own fault causes damage" (Botha 1994:76). Malicious damage to property often takes place at the time when labour union members assemble with the intention of demonstrating, marching or picketing. In terms of section 11(1)(2) of the RGA (No. 205 of 1993), a person who causes damage to property is liable to a charge of misconduct, if it has been established by the human resource managers at the school level that a statutory duty to control marchers was breached without any justification, and that the wrongdoer intended to cause malicious damage to property. It is incumbent upon the human resources manager to ascertain whether the act of the wrongdoer is wrongful and illegal in terms of section 11(2) of the RGA (No. 205 of 1993).

It must be borne in mind that union representatives have a legal duty in their capacity as union office bearers when organising a protest march, demonstration or picketing to register their dissatisfaction with the employer. This means that the union representatives should see to it that the protest march or demonstration is peaceful, unarmed, and that malicious damage to property is avoided (section 17 of the Constitution and section 11(1)-(4) of RGA, No. 205 of 1993).

Should one of the union representatives or the members of the union unjustifiably cause damage to property, the union as a juristic person could be held responsible because he/she failed to adhere to the law and regulations pertaining to assembly, demonstration, picketing and petition (section 17 of the Constitution, No. 108 of 1995 & section 11(1)-(4) of RGA, No. 205 of 1993). The picture below shows how the walls of the district office of Odendaalsrus were damaged by the unionised educators who marched to this office to stage a demonstration which was a protest action against redeployment, rationalisation and temporary educators (It must be mentioned that other writing on the wall is not published because of the profane language used).

Picture 2-1: Malicious damage to property



Malicious damage to property is a serious offence, in that the constitutional rights regarding the ownership of property by an individual are infringed (cf. section 25(1) of the Constitution, No. 108 of 1996). Schools whose window panes, doors, inside walls have been broken during protest marches do not provide adequate privacy and security to learners. Makoe (1991:6) alluded to the fact that on the walls of metropolitan schools, there are derogatory slogans and defaming graffiti. Maseko (1993:7) and Somphetha (1993:4) report that the roofs of schools were burnt down during protest marches at the height of unrest in South Africa. According to them, learners are forced to use classrooms without roofs and educational facilities, and these harm the learners' dignity.

As has already been mentioned, the unionised educators marched to the Odendaalsrus District office to protest against the termination of temporary educators' service. What was strange was that the Odendaalsrus District office was targeted, instead of the provincial offices of education which terminated the services of the educators. It was also not clear what the objective of the protest march was because educators whose duties were terminated knew that they were temporarily appointed (Seloane 1997:4). What puzzled one was the fact that the protest march was not orderly. Instead of demonstrating peacefully, the union representatives and members maliciously damaged the walls of the district office with the intention of provoking and humiliating the employer (cf. Picture 2-1).

2.3.6 Political activities on the school premises during school hours

What makes human beings different from animals is that they strive to satisfy their political needs because they are political beings. The Constitution accords all the South African's citizens the right to participate in politics. It also allows everyone to associate with any political party, and to choose any political party he or she wants to vote into power. Mention must be made that an individual is protected from being coerced to participate in political activities. In order to satisfy political needs, an individual should be allowed to express himself or herself freely without infringing on the rights of others (sections 16(1)(2); 18; 19(1)-(3) of the Constitution, No. 108 of 1996).

As the term denotes, the workplace is the place where workers or employees are expected to work, and not to engage themselves in party political activities (Chapter 2, regulation C.3.7 of the PSA Regs, No. R. 679 of 1999). If educators actively involve themselves in politics on the school premises during school hours, this act shall be regarded as denying the learners their constitutional right to learn and to be taught (section 29(1)(2) of the Constitution, No. 108 of 1996). In South Africa some educators practise politics on the school premises, and this makes learners believe that politics is better than education (Mabunda 1998:4). Political activities during school hours impact negatively on the learning and teaching process. Similarly, the management of labour relations as part of human resource management is impeded by political activities on the school premises.

What is notable in South Africa is that institutions of learning that used to be known as DET schools are not motivated because of the legacy of the political struggle. In the past, learning institutions, more especially the secondary schools were the battlefields where the then National Party government was fought (cf. paragraphs 1.1 & 1.2). In spite of the fact that the National Party government has collapsed, educators still practise politics on the school premises during school hours. Mothapo (1997:10) reports that politicised educators do not want to change from the state of negativism to the state of professionalism, and that this state of affairs renders schools ineffective and unproductive.

Practising politics during school hours became rampant after the release of Mr Mandela in 1990 (cf. paragraphs 1.1 & 1.2). Because of political activities during school hours, a great deal of learning time was lost through protests, boycotts, marches, sit-ins and the disruption of classes

which was followed by violence. Molefe (1993:6) reported that it appeared as if educators and learners were deriving pleasure from practising politics on the school premises during school hours. Educators looked for an issue or something which could be used as a pretence to justify staying out of classrooms. For instance, Soweto educators took to the streets to protest against the retrenchment of their colleagues. This led to no schooling for two weeks while SADTU was negotiating with authorities to have retrenched educators reinstated (Molefe 1993:6).

By participating in politics during school hours, an educator is doing a disservice to the community he or she is obliged to serve, and this behaviour renders him or her liable to a charge of misconduct (section 17(1)(b)(c)(d)(m) of the EEA, No. 76 of 1998). Political activities on the school premises during school hours are detested by parents because they want their children to be taught for every hour of the school day (Monama & Makunike 1999:2). In terms of the SACE code of conduct, an educator should take cognisance of the fact that parents are partners in education, and that educators should promote a harmonious relationship with them. The contravention of the educators' code of conduct renders an educator liable to a charge of misconduct (section 28(f)(i)-(iii) of the EEA, No. 76 of 1998, Boshoff & Morkel 199:4-9, 4-10, 4-11).

2.3.7 Failure to honour agreements

In terms of section 23(1)(c)(d) of the LRA (No. 66 of 1995), issues pertaining to labour matters are negotiated and agreed upon by employee and employer organisations in the Education Labour Relations Council. There are a number of items that may be negotiated and agreed upon. Among others, Dessler (1997:573) identifies the following: management rights; grievance procedures; arbitration of grievances and disciplinary procedures. According to Dessler (1997), an agreement which entails the above-mentioned is called a contract agreement. As has already been noted, section 23(1) of the LRA (No. 66 of 1995) confers on every registered employee union and registered employer organisation the right to collective agreement. Labour relations matters to be agreed upon are negotiated by the Education Labour Relations Council.

The Education Labour Relations Council is a juristic person established in terms of section 37(b) of the LRA (No. 66 of 1995), and it consists of employer organisations and employee organisations. The Education Labour Relations Council is authorised by the provisions of the LRA to negotiate agreements on matters of mutual interest, or by means of consultation. The

Education Labour Relations Council can negotiate agreements in respect of disputes; settlement of matters of mutual interest and other labour matters (section 28(2)(a)-(j) of the LRA, No. 66 of 1995). Agreements may also be reached between the employer and the employee on the date upon which labour or protest action may commence or discontinue (section 64(1)(a)-(c) of the LRA, No. 66 of 1995).

In terms of section 23(2) of the LRA (No. 66 of 1995), a collective agreement binds the employer and employees. According to the provisions of the afore-mentioned section, even the person who was not employed at the time when the decision was taken, shall be bound by the agreement should he or she be employed after the collective agreement has been concluded. In the case of labour action, employees are bound by the agreement to commence or discontinue a protest action on the date agreed upon by the employee organisations and the employer organisation. To dishonour agreement may constitute misconduct (section 64(1)(a)-(c) of the LRA, No. 66 of 1995).

A typical example of educators who dishonoured an agreement reached in the Education Labour Relations Council is that of Kutlwanong near Odendaalsrus in the Free State. The local branch of SADTU protested against the number of parents serving on the Governing Body of a school that was conducting interviews for a post of the Head of Department, because they feared that one of their friends would not be recommended for the post (Seloane 1997:4). It is surprising if not ironic to see that SADTU questioned the number of parent representatives when in actual fact SADTU was represented in the Education Labour Relations Council which agreed that the number of parents shall be more than those of other stakeholders (section 23(1)-(9) of SASA, No. 84 of 1996).

Failure to honour an agreement is not a new thing in the teaching fraternity. In the old dispensation educators failed to honour agreements reached between them and the authorities. Luti (1993:2) pointed out that agreements reached between the teachers' unions and the education authorities in Pretoria to discontinue a strike was broken. According to Luti (1993), most of SADTU members pressed ahead with a national strike despite agreement reached at that meeting between the Government and education organisations. This arrogant gesture on the side of educators affected the labour relations at all schools controlled by the erstwhile DET; and it also led to unfair labour practices such as evicting principals from their schools by SADTU (Molefe 1993:3).

2.3.8 Disclosure of organisational information

Section 32(1)(b) of the Constitution (No. 108 of 1996) states that everyone has access rights to organisational information, while in section 16(1)-(3) of the LRA (No. 66 of 1995) it is explicitly stipulated that employees should have access to information related to their employment. It is however stressed in section 16(4) of the LRA (No. 66 of 1995) that some information is confidential and sensitive; and that it may not be published or disclosed. It is because of this reason that the employer should sensitise the employees about the information which is confidential and sensitive. To maintain good labour relations, union representatives shall disclose information deemed helpful for collective bargaining to other employees (Graham & Bennett 1998:279).

In terms of section 17(1)(i) of the EEA (No. 76 of 1998) and section 201(1) of the LRA (No. 66 of 1995), union representatives and other educators are prohibited from disclosing information gathered or obtained by the educator or union representatives through their employment, without prior permission of the employer. An educator shall be found guilty of misconduct should he or she disclose information with the intention of threatening the control of education in general and that of schools in particular. The following information may not be published because it may jeopardise the administration and management of education: issues related to national security; illegal information; confidential information; matters affecting an individual; *sub judice* matters; information intended to defame the well-being of the employer (Graham & Bennett 1998:279).

In the old dispensation, section 22(1)(l) of the ETA (No. 90 of 1979) prohibited educators from disclosing information without first having obtained the permission of the Director-General. In spite of this Act, educators did disclose sensitive information. An educator attached to one of the schools in Soweto near Johannesburg is cited as an example. This educator informed a media reporter that the DET under supplied schools with books. The educator gave an example of an incident where the DET supplied fifty books instead of the hundred and thirty books ordered (Sompetha 1993:4). It might be true that the number of books received differed from the number of books ordered; but the crux of the matter is that the Department of Education considered the number of books on hand, and the number of learners before books could be supplied. If eighty learners increased by fifty, the school was supposed to have been supplied with fifty top up books,

not one hundred and thirty books because it was assumed that there were still eighty books on hand.

The disclosed information intended to cause substantial injury to the employer and it also appealed to the emotions of the educator's listeners. It is very strange to realise that the educator did not tell the public that educators do not retrieve books from the learners and that the learners do not return books to schools at the end of every year (Mabunda 1998:4). Instead he blamed his irresponsibility on the DET. Furthermore, the educator intended to derogate the DET and to tarnish its integrity and image, by informing the press that there was a shortage of desks and vandalism of learning institutions (Somphetha 1993:4, Makoe 1991:6). What this educator reported holds water, but he failed to tell the public that vandalism of buildings and the stealing of school assets was not done by DET.

It is a fact that structural damage is a common problem among most schools formerly controlled by DET. The members of the community, including hooligans and thugs removed windows, doors, corrugated iron sheets and furniture from most of the township schools. It is therefore unfair for this educator to blame vandalism and theft on DET. Seats and desks are for instance used by patrons in shebeens around the townships while doors, windows and corrugated iron sheets are used to erect shacks (Somphetha 1993:4). In fact, what one sees at the institutions of learning in the townships, is the consequence of the political upheaval of the past few years. During the political struggle, learners were encouraged to damage and to destroy every government structure because it was associated with the dissolved National Party government (Molefe 1992:11).

2.4 Contravention of statutory provisions

2.4.1 Sexual abuse of learners

Sexual harassment is detested and abhorred in the workplace. Most cases that have been reported in the Labour Relations literature are those cases where the employer or the employee sexually harass other employees or employer in the private sector for one reason or another (Leap & Crino 1993:110-112, Dessler 1997:38-39). However, sexual abuse has become increasingly common in the education public sector, more especially at school level. Educators court the learners they teach, and sexually abuse them. In most of the cases reported, learners who have been sexually

abused are minors (Lengane 1996:1, Seloane 1998:1, Sefara 1998:3, Mamaila 1998:3). A school going child is a minor who is between the age of seven and eighteen, and he or she is still under the care and the protection of both parents and teachers (Oosthuizen 1994:55).

According to Leap and Crino (1993:111), sexual harassment is when a male or a female employee makes sexual offers or advances in exchange for favours in the workplace, or when an employee rapes another employee. In the school setting, sexual abuse is committed differently because here we find an adult abusing a child. Sexual abuse of learners by educators is in violation of section 17(1)(g) of EEA (No. of 1998), in that the provision of this section stipulates that an educator shall be guilty of misconduct if he/she commits sexual or any other form of harassment.

The sexual abuse of learners by educators is also in conflict with section 12(1) of the Constitution (No. 108 of 1996), which accords an individual the right to move freely and to be secure. In addition to this, it must be said that paragraphs 3.1, 3.3, 3.5, 3.6 and 3.7 of the SACE Code of Conduct clearly spell out that an educator must behave as follows towards the learner: respect the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality; strive to enable learners to develop a set of values consistent with those upheld in the Bill of Rights as contained in the Constitution of South Africa (No. 108 of 1996); avoid any form of humiliation, and refrain from child abuse, physical or psychological; use appropriate language and behaviour in his or her interaction with learners, and act in such a way as to elicit respect from the learners (Boshoff & Morkel 199:4-9; 4-10).

The foregoing SACE Code of Conduct is not observed by some educators. It has for instance been noted that they engage themselves in sexual intercourse with learners as young as nine years, and who are still minors, and who need to be guided and protected. In spite of this fact, learners are nonetheless sexually abused by some educators into whose care they are entrusted (Mamaila 1998:3). Sexual intercourse which involves educators and learners is regarded as rape, and constitutes misconduct even if it occurs after hours, outside the school premises at a social function, or whatever the place may be. Even if the sexual intercourse occurred with the consent of a learner, it will be regarded as a sexual abuse because a learner is still a minor, and this immoral act could constitute a reason for dismissal (Leap & Crino 1993:111).

Sexual harassment of women and sexual violence against babies, toddlers and school going children is rampant in South Africa. Almost everyday electronic and print media report on rape of

minors. Zulu (2002:4) also observes that some of the rape incidents occur in the school premises where the rapists are educators. Mohale (2002:3) supports what Zulu (2002) has observed by pointing out that the researchers of the South African Medical Research Council found that of all the rapes in South Africa, teachers are responsible for a third.

It seems as if the labour unionism, which is not necessarily professionalism, plays a pivotal role in this regard. Some unionised educators no longer regard themselves as professionals but ordinary labourers/workers who must take part in industrial actions which are more often than not radical and distracting in nature (cf. paragraphs 2.3.1 - 2.3.8).

The preceding paragraph implies that the professional values and norms that the teaching profession cherished before the introduction of unionism have been eroded. Hence the rape of girls as young as nine years by the educators in the school premises. This notion is supported by Human Rights Watch (March 2001) which pointed out that in spite of the fact that the South African girls have more educational opportunities than their counterparts elsewhere in the Southern Sahara states, they are being raped, sexually abused, sexually harassed and assaulted by their own teachers, in the school premises. Sexual violence and sexual harassment of learners by their teachers deny them the right to basic education as enumerated in section 29(1) of the Constitution, No. 108 of 1996).

Lengane (1996:1) reported that a principal of a Soweto school near Johannesburg raped a nine year old school girl attending his school. The indecent and immoral act took place in the principal's office during school hours. It is said that the principal usually asked the girl to bring water to his office where he raped her whenever she brought water. Lengane's (1996) informants told him that there were other girls who were also sexually abused by this principal. In the Northern Province, in a rural area, an educator abducted a thirteen year old girl and raped her. However, the educator was arrested by the police after keeping the girl at his home for two days (Sefara 1998:3).

Another incident of rape occurred at one of the Free State schools in Thabong near Welkom. An educator attached to this school raped a thirteen year old girl. The incident took place at the school in the afternoon during a fund-raising campaign. The educator instructed the school girl to follow him to the staff-room where the girl was accosted. Having realised that the staff-room was not favourable and conducive to raping the girl, the educator instructed her to follow him to one

of the school's classrooms. Upon arriving in that classroom, the educator repeatedly raped the girl (Seloane 1998:1).

Against the background of the sexual abuse incidents outlined above, it becomes clear that the conditions and situations the learners are subjected to are dangerous. These hazardous conditions impede proper learning and educative teaching. It has been found that a learner who is sexually abused and victimised is psychologically affected, and that this results in irreparable damage to the learner's career (Leap & Crino 1993:110). It has also been noted that the victims of rape sustain serious injuries during the forced sexual intercourse to such an extent that they are hospitalised. Subsequent to their discharge from hospitals, they need post trauma counselling to try to assist them psychologically (Sefara 1998:3).

2.4.2 Transgressing financial control regulations

In terms of section 16(1)-(3) of the SASA (No. 84 of 1996), the School Governing Body (SGB) of a public school governs the school. It must be noted that this body is not a line function body and does not manage the school, but governs it by seeing to it that the school funds or the school fees and the physical assets of the school are administered in accordance with the provisions of sections 21(1)(a) and 37(1)-(6) of the SASA (No. 84 of 1996). The budget of the school is drawn up in accordance with financial regulations by the SGB, and it must show the estimated income and the expenditure envisaged for the following financial year. After the budget has been approved by the parents in a meeting meant for this purpose, money may be collected from the parents through the learners or through any fund raising. It is not procedurally correct to collect the school fees before consensus is reached between the parents and the school (sections 38(1)(2) & 39(1)-(4) of SASA, No. 84 of 1996).

The school funds and the school fees are administered by the SGB in accordance with the financial rules laid down by the Head of Department. According to the provisions of SASA, all the money that is collected by the SGB must be deposited into an account with a recognised commercial bank. It must be noted that the money collected by the SGB is to be used for educational purposes or for the performance of the functions of the SGB. Most SGBs have appointed principals of schools as treasurers, while the educators have been assigned to collect money from the learners (section 37(1)-(6) of SASA, 1996, No. 84 of 1996).

The method of collecting money from learners differs from school to school. Some schools use class teachers to collect money from the learners. These educators are provided with class receipt books whose numbers differ from that of another class teacher. When a learner has paid, he or she is given a receipt, and this money is handed over to the principal who in turn gives a receipt to the class teacher for the money he or she received from that particular class teacher. Principals are expected to deposit all the moneys in the school banking account. At other schools, learners pay the school funds or fees at the school secretary's office (section 37(3) of the SASA, No. 84 of 1996).

The school funds or fees are a bone of contention at many schools in the townships because of the lack of the knowledge of financial management of the principals of these schools. The lack of financial expertise has led to principals' properties being set alight or damaged by the learners who demand to know how the school money is used. It has also caused discontent among the educators, parents and learners (Collins 1994:1, Rantsekeng 1995:2). Another reason why there are always complaints in respect of school funds or fees, is because educators steal money collected from the learners. A case in point here is a class teacher at one of the schools in Thabong, near Welkom, in the Free State. This educator embezzled the money collected from the learners for a long period of time before this was discovered by the principal (SP File EMIS 44712033:1998).*

At that school, each learner paid hundred and twenty rand per annum towards the school's development fund. The educator would report only sixty rand to the principal, and he lined his own pockets with the other sixty rand. This educator contravened Chapter 2, regulation C.4.8 of the PSA Regs (No. R. 679 of 1999) by writing hundred and twenty rand on the original receipt without inserting a carbon paper. After the learner had been given the receipt, the educator wrote sixty rand on the counterfoil as well as on the receipt that remains in the book with carbon paper in place. How he did that nobody knows. In the receipt book, the money as paid in by the learner, was reflected as sixty rand, while on the receipt given to the learner it was indicated that the learner paid hundred and twenty rand (SP File EMIS 44712033:1999).*

* SP File EMIS 44712033:1999. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (District 18, Free State Department of Education).

Another educator at the same school contravened Chapter 2, regulation C.4.8 of the PSA Regs (No. R. 679 of 1999) by receiving the money from the learners and failing to pay it in at the secretary's office. The educator also failed to submit his receipt book to the secretary's office before he left for home every day, despite the fact that he knew that the receipt books were to be left daily with the secretary of the school. When the principal instructed him to submit the receipt book to his office he refused. He however, submitted it on the intervention of the SGB. The receipt book indicated that the educator committed fraud by changing the dates on which the learners paid their development funds (SP File EMIS 44712033:1998).*

2.4.3 The forging and selling of reports

Subsequent to the Soweto uprising in 1976, the situation at schools situated in the black residential areas changed tremendously. Some of the learners from these areas go to schools with all kinds of weapons, while others abuse alcohol and drugs (Makoe 1996:17, Dlamini 1998:3). At these schools some of the learners do what they like. They go to school dressed shabbily, they arrive at school very late and leave school before the end of the school day, and they are seen basking in the sun all day long or loitering in the dusty streets of the townships. Some go to the extent of playing soccer in the classrooms or of engaging themselves in gambling without any fear of their educators (Makoe 1991:2).

The educators at these schools are demotivated, and have lost direction. Those who were serious about their work have decided to take retrenchment packages to avoid the shameful situation which is discernible in some schools (Matseke 1997:12). Some of the remaining educators still come to school very late and refuse to plan and prepare their lessons. These educators do not allow principals to pay their classes a visit. It is therefore difficult and impossible for the principals to give guidance, supervision and to exercise control over their professional work (Scholtz 1990:1-3). Because of the aforementioned facts, schools do not perform well in cultural activities, sporting activities as well as in the examinations. The results of the Grade 12s for the last ten years speak for themselves (Mabunda 1998:4).

* SP File EMIS 44712033:1999. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (District 18, Free State Department of Education).

As a defence mechanism for the poor performance at schools, the wayward educators blame every thing on the dissolved National Party government, even on the present government. For instance, when a learner has failed the examinations, they will simply tell you that he or she failed because the school where that particular learner attended did not have a library or a laboratory, when in actual fact they encouraged the learners to destroy those facilities prior to the new dispensation (Khupiso 1991:1, Maseko 1993:7). Others hide behind the cloak of SADTU, and if the principals dare demand work from them, they threaten them with SADTU (Krissy 1998:7).

The situation at these schools is so deplorable that educators forge and sell examination reports to learners. An educator attached to one of the Thabong secondary schools near Welkom, contravened section 17(1)(a)(l)(n) of the EEA (No. 76 of 1998) and Chapter 2, regulations C.4.5 and C.5.3 of the PSA Regs (No. R. 697 of 1999) by forging and selling reports to learners. He stole the report forms and the principal's stamp. This educator allotted marks to learners even for the subjects they were not doing. The marks that were allotted to learners did not tally with the mental ability of those learners. After the report forms had been completed, the educator committed a serious offence by forging the principal's signature (SP File EMIS 44712040:1998).^{*} According to Sharrock (1989:286) a person who forges the signature of a person who has been authorised to sign official documents is committing a criminal offence.

When it was discovered that he had embarked on an action that was detrimental to the management of the school and that of the labour relations, he wrote a letter to the principal in which he apologised for his action (SP File EMIS 44712040:1998).^{*} The forging and selling of reports is rife in the Goldfields schools that were controlled by the then DET. What could be mentioned at this juncture is the fact that each and every examination report fetches fifty rand, while female learners secure sexual pleasures for the seller (SP File EMIS 44712040:1998).^{*} This practice is common to some schools, but not necessarily found in every school.

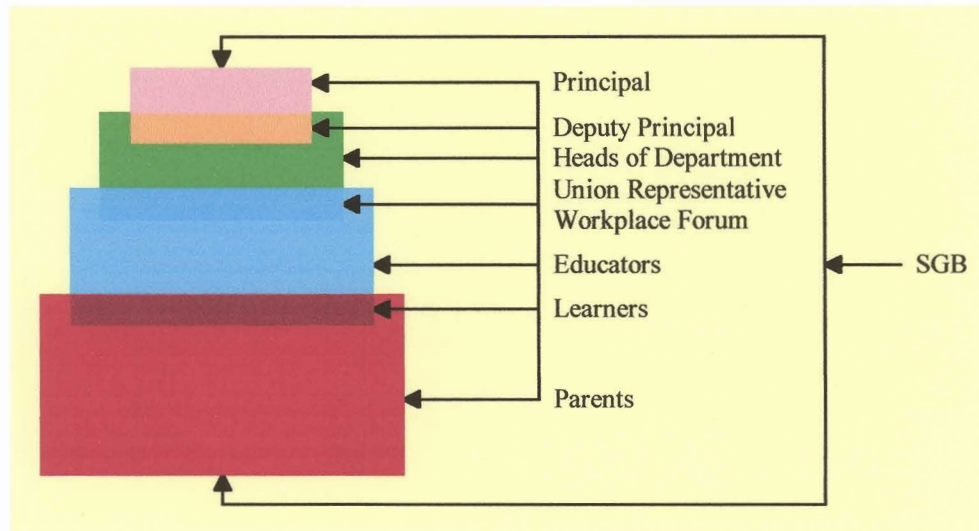
2.4.4 Using school property without permission

A school is an organisation because it has all the characteristics of an organisation. Among others, people and organisational culture are mentioned as some of the characteristics of an organisation.

^{*} SP File EMIS 44712040:1998. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (Lejweleputswa District, Free State Department of Education).

People are placed in the different levels of the organisational structure of a school as depicted below in order to perform the school's functions.

Figure 2-2: The structure of a school



Each of the above people, on each level of the school structure has a specific role to play. An ordinary educator cannot play the role of a principal, nor can a learner play the role of an educator, so is the case with a parent. Should anyone on the level of the school structure, as depicted in Figure 2-2 play a role of another person, labour relations are inevitably going to be adversely affected (O'Neill 1994:102-103). People on each level of the school structure, except the learners, define the policy, the rules, the objectives or goals, the values and norms as well as the code of conduct of the school (Boshoff & Morkel 1999:2A-9; 2B-12; 2B-18; & 2B-35).

The principal manages systems and procedures, and sees to it that they are implemented by the people on each level of the school structure. The organisational culture of the school is concerned with how and why the school functions as it does, as well as the elements that influence the school labour relations. Should norms and values of a school not be observed by the school community, more especially educators, labour relations will inevitably be adversely affected, and everybody will lose direction. And where there is no direction, everybody does what he or she likes (O'Neill 1994:102-104).

It must be borne in mind that at a school, educators differ in terms of personality and attitude. A principal as a human resources manager is therefore dealing with different attitudes and

personalities. With regard to personality, Luthans (1998:131) identifies different characteristics of an employee's personality traits. Among others he makes mention of emotional instability. According to him, an employee who displays this characteristic is always tense, insecure and nervous. He furthermore says that attitude is how an employee feels and behaves towards another person (Luthans 198:139). Some of the educators attached to the township schools display emotional stability, whereas on the other hand they have a negative attitude towards the principal and the school.

A Thabong educator, near Welkom, in the Free State was always tense and nervous. This educator felt insecure at school. Every time the principal held a meeting, he attacked the principal for no apparent reason. Whenever the principal addressed an issue, he claimed that the principal was referring to him, when in fact he was not. The behaviour he displayed made some of the educators believe that he was a hero, and they therefore hero-worshipped him.

He developed a negative attitude towards the school and everything that the principal said or did. Having realised that he was being hero-worshipped, he rallied support from some of the learners who did not want to adhere to the rules of the school as well as those educators who adored him (SP File EMIS 44712044:1995).*

Because of lawlessness and anarchy that is prevalent at schools, he managed to do as he pleased whenever he wanted. He was often seen in the principal's office submitting learners and educators' so-called grievances. He also succeeded in getting the keys for the hall and those of some of the classrooms. This educator was no longer playing the role of an educator but he played the role of the principal (Figure 2-2). Ministers of independent churches always went to him without the knowledge of the principal to negotiate the use of the school hall over the weekends. The local people who wanted to use the hall arranged with him. He let these people use the hall without the permission of the principal or that of the SGB of the school (SP File EMIS 44712044:1995).*

* SP File EMIS 44712044:1998. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (District 18, Free State Department of Education).

Every time the hall was used, there was a certain amount of money paid by those who hired it. He lined his pockets with that money which was never reported and disclosed to the principal. The education officer in charge of the school discovered this sad state of affairs, and he immediately put an end to this practice (SP File EMIS 44712044:1995).* By using the school hall without the knowledge of the SGB, and that of the principal, the educator contravened section 20(1)(g)(l) of SASA (No. 84 of 1996) which stipulates that the control of the school building is exercised by the SGBs of schools, not educators. This educator also acted in conflict with section 17(1)(e)(g)(j)(k) of the EEA (No. 76 of 1998), in that he privately made money by hiring the hall out, by harassing the principal and by using state property without permission.

2.4.5 Allotting marks to learners without marking their scripts

As the head of the learning institution, a principal is responsible and accountable for everything that happens at his/her school. He/she manages the human resources as one of the key areas that need to be managed by him/her (Chapter 2, regulations C.1-C.5 of the PSA Regs, No. R. 1091 of 1999). The educators who resist control and supervision retard the progress of the school and they also influence and affect the labour relations of the school negatively (paragraphs 2.5.3 & 2.5.4). If the examination scripts are not marked, the principal of a school is held accountable because it is his or her responsibility to see to it that educators mark the scripts and enter the marks in the mark sheets. It is also incumbent on the principal to organise and to plan the release of the examination results and the issuing of reports to learners (Chapter A, paragraph 4 of the EEA Regs, No. 222 of 1999).

Examinations are very important because they are the end product of what has been done throughout the year. They also serve as a gauge which assesses both the learner and the educator. Examinations enable the learner to see where he or she stands in terms of knowledge which the educator has imparted throughout the year, and they also help in making the Grade 12 learners aware of the careers they may choose in future. On the other hand examinations help the

* SP File EMIS 44712044:1998. This number is used to protect the educator's identity. The information can be retrieved, using this number if need be (District 18, Free State Department of Education).

educator to determine whether the standard he or she has set should be reviewed or not. In the case where learners are allotted marks without the educator having marked their scripts, it will be difficult to assess both the learner and the educator; and the standard of education is inevitably going to deteriorate (Mabunda 1998:4).

Owing to the situations and conditions at some township schools, principals feel powerless and this leads to a laissez-faire attitude. Where there is a laissez-faire attitude, educators normally do what they like without any fear of anybody. Prabhakara (1998:9) reported that a school in KwaZulu-Natal was running short of educators. Those who were on the staff did not co-operate with the top structure of the school (Figure 2-2). The educators of that school did not want to teach learners at all. According to Prabhakara (1998) everyday six or ten educators absented themselves from school, and those who reported for duty whiled away their time in the staff room. At the end of every quarter, including the end of year examinations, they transgressed Chapter 2, regulations C.1.1, C.1.3 and C.1.5 of the PSA Regs (No. R. 679 of 1999) by allotting marks to learners without marking their scripts.

In another incident, the progress of a school in Mamelodi outside Pretoria was retarded by the fact that some of the educators of that school did not mark the learners' scripts. Despite the fact that the scripts were not marked, the educators allotted marks to the learners. The director of education for Pretoria district became aware of those irregularities, and he warned the parents that they must ignore the reports that were sent to them because learners' marks were not authentic. The allotting of marks to the learners without marking their scripts constitutes misconduct in terms of section 17(1)(b) of the EEA (No. 76 of 1998) and Chapter 2, regulations C.1.1, C.1.3 and C.1.5 of the PSA Regs (No. R. 679 of 1999).

2.4.6 Inciting and instigating others against the principals or other officers

South Africa has been an undemocratic country with an undemocratic society for a long. When the new dispensation was ushered in, violence and aggression abounded in South Africa. In fact, research shows that this country has the highest violence rate in the world (Mulholland 1998:1). The violent behaviour which manifests itself in the country in general, and in the schools in particular, came about as a result of political struggle against the then National Party government (paragraphs 1.1 & 1.2). During the political upheaval, there was no control whatsoever at

schools. Educators refused to submit to authority and supervision. They also incited and instigated learners and political thugs against principals and DET officers (Scholtz 1990:1-3).

To harass principals and officers is in violation of the provisions of the Acts and the Constitution of South Africa which are underpinned by democratic values and principles. It must also be noted that section 4(1)-(3) of LRA (No. 66 of 1995) confers on the employer the fundamental right to be protected against unfair labour practices. Principals and officers are immediate managers who have been empowered by the provisions of the PSA Regs to perform the function, or to play the role of the employer (Chapter 2, regulations B.1; B.2 & B.3 of the PSA Regs, No.R. 679 of 1999). It is therefore unacceptable for the educators to incite others against principals or any of the Department officers, whether it is during labour action or during normal teaching hours (section 8(5)(6) of the RGA, No. 205 of 1993).

In spite of the above stipulations, SADTU incited and instigated educators who are affiliated with this union to prevent departmental officers from visiting schools and to bar principals from paying class visits to control educators' professional work (Scholtz 1990:1-2 & Mothapo 1997:10). In the premises of schools in Soweto, political thugs, who were incited and instigated by educators against the principals and the departmental officers, caused havoc in the township in general, and in the schools in particular. The instigation and incitement led to the burning down of some educators', principals' and inspectors' cars and houses (Makoe 1991:6).

Another recorded incident is where Soweto educators incited and instigated learners against principals who were trying to exercise control during the time when the country was in turmoil. The result of incitement and instigation was that the principals were whipped at gun-point by the learners they were supposed to be disciplining. The instigated learners instructed the principals to leave the premises of schools (Smith 1993:4). The torture the principals were subjected to, traumatised and affected them psychologically. The act of the educators who incited and instigated learners against principals, constituted unfair labour practice and misconduct. This act also tarnished the integrity and the dignity of the principals (section 10 of the Constitution, No. 108 of 1996).

It is evident from the discussion in the research project that subsequent to the dissolution of the National Party government, the unionised educators resented and challenged the management and leadership of schools (cf. paragraphs 2.24, 2.3.1, 2.3.4, 2.3.6 & 2.4.6). This resentment resulted

in the unionised educators discriminating against some principals. The discrimination which is meted out to some principals (cf. paragraph 2.4.8.5) is in conflict with section 9(4) of the Constitution (No. 108 of 1996).

Secondly, it is unconstitutional for the unionised educators to discriminate against some of the principals because the provision of section 9(4) of the Constitution (No. 108 of 1996) confers on the employee and the employer the right to be treated like any person in the workplace because people are equal before the law. Thirdly, every person should feel free and protected while executing his or her duty in the workplace. A person who does not treat others equally, and who also discriminates against others denies others their constitutional right. Discriminating against others in the workplace constitutes an unfair labour practice (section 7(1)(2)(b)(c)(v) of the LRA, No. 66 of 1995).

What one sees and hears happening at schools, like the killing of educators, or the stealing of educators' cars on the school premises, is the recurring of incitement and instigation by unionised educators; and today South Africa reaps the fruits of incitement and instigation (Malefane 1999:1). What concerns most South Africans is the appalling conditions that are discernible at the learning institutions that were meant for blacks. Incitement and instigation have a negative impact on the management of schools and on labour relations in particular (Molefe 1993:6, Maseko 1993:7).

Lastly and more importantly, it must be pointed out that to instruct a person to ill-treat another person, is constitutionally unacceptable because every person has the right to execute his or her duty freely, and to be protected and secured at his or her workplace (section 12(1) and 24(a) of the Constitution, No. 108 of 1996). Subject to paragraphs 6.1, 6.3 and 6.4 of the SACE Code of Conduct, an educator must refrain from undermining the status of his/her colleagues and he/she must respect the various responsibilities assigned to colleagues and the authority that arises therefrom, to ensure the smooth running of the educational institution; and it is also expected of an educator to use proper procedures to address issues of professional incompetence or misbehaviour (Boshoff & Morkel 1999:4-10).

2.4.7 Corporal punishment and assault

Educators interact with learners on a daily basis in the classrooms; on the sports-ground; during excursions; at school functions etc. The educator learner encounter is that of an adult and a child. It is therefore the duty of the educator to discipline the learner whenever both the learner and the educator are in an educational situation (du Plooy & Kilian 1980:67). When maintaining discipline, an educator must be fair. Discipline at schools should not be negotiable. In terms of Christian beliefs, it is the God-given right of a parents to discipline their children, and hence the right of an educator who is acting *in loco parentis* (cf. Eph. 6:4).

When disciplining learners, democratic principles and values must be considered. Disciplining learners is not a new thing because education has been a phenomenon which has been present in every culture. According to the Basotho custom in the past, only elderly people were allowed to discipline children. Even today, it is in conflict with the SASA (No. 84 of 1996) to delegate a learner to discipline another learner (Boshoff & Morkel 1999:2B-24).

A code of conduct for learners should be formulated because it helps educators to maintain discipline. It is however surprising, if not disgusting to realise that learners at black schools formulate codes of conduct for themselves (Esterhuyse 1995:18). However, it is not clear whether the formulation of codes of conduct by learners is a world wide phenomenon. Even then, it must be noted that a learner is a minor who should be guided and assisted by an adult at all times (Boshoff & Morkel 1999:2B-63 and section 28(3) of the Constitution, No. 108 of 1996). Because of the minor's age, his/her legal knowledge is limited. It is therefore necessary for the educators to guide a learner if he or she is allowed to exercise his or her right to have a say in education or to participate in the formulation of the code of conduct (Bondesio 1989:24; 36; 38). To allow COSAS to formulate a code of conduct for other learners without any assistance is similar to a situation whereby a patient would be allowed to prescribe medication for other patients.

If a learner does not want to conform or comply with the school's code of conduct, punishment must be meted out in accordance with the SASA. Under no circumstances should an educator harm a learner psychologically, physically or spiritually. According to SASA, punishment should be regarded as a corrective measure (section 9(1)-(5) of SASA, No. 84 of 1996). When punishment is administered at a school, offenders will become aware of unacceptable behaviour.

The aim of punishing a learner is to create an awareness in the offender of the values and norms of the society in which he or she lives. Punishing learners helps an educator maintain discipline and order. Though the principal is accountable at his or her school, there are some issues which can be resolved by educators. When disciplining learners, it must be noted that the law does not allow corporal punishment and assault (Boshoff & Morkel 1999:2B-24; 2B-25).

The rights of an individual are enumerated under the Bill of Rights in the Constitution of South Africa. Among others it affirms the democratic values of human dignity and privacy (section 10; 11; 12 & 14 of the Constitution, No. 108 of 1996). It is therefore incumbent on the school to see to it that the aforementioned rights of learners are protected and respected. If a learner is treated, or punished in a cruel, inhuman or degrading manner by an educator, this is a violation of the learners' rights. Instead of assaulting and administering corporal punishment to the learner, an educator should look for a lasting solution to the disciplinary problem (Boshoff & Morkel 1999:2B-21).

In terms among others of the provision of section 10(1) of SASA (No. 84 of 1996), no educator or any person shall physically, spiritually or psychologically assault or ill-treat a learner. Though corporal punishment has been abolished, there are still educators who administer it, at some schools that used to be under the control of the DET. Sebokeng educators - a place situated near Vereeniging in Gauteng are cited as an example. Three educators of this school whipped an eleven year-old learner repeatedly till he sustained body injuries. After whipping him, the three educators apologised to the learner's grandmother who opened an assault case with the local police (Nxusani 1999:3).

In another incident, an educator attached to a school in KwaZulu-Natal's South Coast meted out corporal punishment to a seven year old girl because she could not write two English words on the writing-board. This particular educator used a stick on the learner's arm till the stick was broken. When it broke, the learner had the chance to run out of the classroom. This did not help her because the educator instructed other learners to fetch her. The little girl was again beaten; but this time with a wooden spoon. The assault was so severe that the girl had to be taken to the hospital where the doctors declared that the injury was so serious to such an extent that the limb would have to be amputated if there was no improvement (Xhabanisa 1998:1).

The above sketched scenarios indicate how cruel, degrading and inhumane educators can be. The incidents of assault mentioned above also show how educators are ignorant of legal aspects which will not stand up in a court. These educators seem not to be aware of the fact that by assaulting learners they violate section 28(1)(d) of the Constitution (No. 108 of 1996), and that corporal punishment is unconstitutional. In terms of section 10(2) of the SASA (No. 84 of 1996) educators who whip learners render themselves liable to a charge of assault, and on conviction to a fine which may amount to dismissal or whatever the fine the MEC for education may deem fit (section 34(c)(ii) of EEA, No. 76 of 1998).

2.4.8 Insubordination as a dimension of misconduct

2.4.8.1 Insolence or lack of respect for authority

The word insolence is used in Labour Relations literature to depict lack of respect of an employee for an employer. Managers at every level of the organisational structure represent the employer, and they therefore ought to be respected and treated with courtesy (cf. Figures 2-2 & 3-1). South African common law also demands that the employee should show respect to his employer because the employer and the employee do not operate on the same level in terms of their positions (Grogan 1993:43).

Respect and authority go hand in hand. The human resources manager is vested with authority which makes it possible for him or her to give orders, to make decisions and to give direction to the educators (Dessler 1997:4). Educators as employees are expected to obey and to respect the human resources manager because obedience and respect ensure efficiency and less interference in the management of a school as an organisation (Hersey, Blanchard & Johnson 1996:4). Even if he or she is not satisfied with the circumstances surrounding the instruction given to him or her by the principal, an educator should obediently carry out that instruction and lodge his or her complaint afterwards in writing (Chapter A, regulation A7.1 of the PSA Regs, No. R. 1091 of 1994).

It is however, important for the human resources manager to avoid bullying and bossing educators. An effective human resource manager is the one who commands respect. This is possible if the human resources managers come to the level of the employees because the days

when formal authority used to be revered are gone (Dessler 1997:15). The modern trend in management of human resource is that the human resources manager should perceive himself or herself to be a team leader who involves educators in the management and leadership activities of the school. This could be done if the human resources manager interacts with the educators in order to influence, inspire and motivate them towards the attainment of goals. The positive interaction of the human resources manager with the educators increases trust, confidence and sound relationships (Dessler 1997:15).

Insolence or lack of respect is displayed differently in different situations by employees in the workplace. This can be done by being impudent, cheeky, disrespectful and rude (Grogan 1997:116). For instance, rudeness is displayed when an employee talks to the employer using profane language. An American employee was fired for using profane language and swearing at his supervisor. The reason for displaying this behaviour was that the supervisor reprimanded him for using sign language to insult his foreman (List 1998:108). Insolence warrants dismissal if it is intentionally done. In South Africa, an employee who displayed anger, refused to do the work he was instructed to do; instead he arrogantly told his supervisor to do it himself. In another incident, an employee was dismissed for tearing up documents in anger, in the presence of the disciplinary committee (Grogan 1997:116-117).

Similarly, at schools educators do display unbecoming behaviour that constitutes insubordination. An educator at a school in Khayelitsha near Cape Town became hysterical when she was confronted by the headmistress for the maladministration of school funds. The educator shouted at the headmistress, and insulted her in the presence of the learners (Jordan 1998:7). At one of the schools in Soweto near Johannesburg a principal who was newly appointed was manhandled by the members of SADTU who illegally confiscated the school's keys from him and illegally dismissed him. The following day scores of learners of that school were seen milling about next to the school because SADTU members had locked the gates (Mkhwanazi 1996:2).

In light of the above sketched incidents, it becomes clear that educators are sometimes ignorant of legal aspects, and that they also seem to be unaware of their role and that of the principal. It also becomes clear that some SADTU members act *ultra vires*, because they think that they are above the law, by virtue of their union having formed an alliance with the government (Nkoto 1999:12). The educators mentioned above have presented their actions in the worst possible light. What they did, does not befit the actions of education practitioners. The behaviour they displayed is in

conflict with section 17(1)(b)(g) of the EEA (No. 76 of 1998). These educators also violated the Constitution of South Africa, in that they did not respect the dignity and privacy of the principal.

In addition to the above, the SADTU members did not have the right to dismiss the principal because he was not appointed by this particular union. By dismissing and confiscating the keys from the principal who had been legally appointed, and who had entered into a contract with the Department; the SADTU members breached the law of contract (du Plessis, Fouché & van Wyk 1998:12). Only the Department of Education has the right to terminate the service contract of an educator, not the SADTU members (du Plessis *et al.* 1998:20).

Moreover, it is an unfair labour practice and unacceptable to discriminate against an employee on the basis of political affiliation (section 6(1) of the Equity Act, No. 55 of 1998). Affiliation to the Congress of South African Trade Union (COSATU) which has formed an alliance with the African National Congress (ANC) makes SADTU believe that it is ruling this country. For example, they oppose the government should they not be involved in initiating a move, no matter how good it is. The teacher award which is opposed by this particular union is cited as an example.

2.4.8.2 Refusing to carry out legitimate instructions

The principal of a school has been legally appointed to head the school. He or she is delegated the power by the employer to give non teaching staff and educators reasonable, legitimate and lawful instructions (Chapter A, regulation A7.1 of PSA Regs, No. R. 1091 of 1994). The principal's legitimate instructions must be carried out by everybody at school. An educator who refuses or fails to carry out legitimate instructions which have been given to him or her by his or her principal, or anybody who has been empowered by the Act to give lawful instructions may be found guilty of insubordination (Chapter A, regulations A7.1 & A7.2 of PSA Regs, No. R. 1091 of 1999). Section 17(1)(c) of the EEA (No. 76 of 1998) also stipulates the fact that an educator who disobeys, disregards or wilfully defaults in carrying out a lawful order given to him or her by a person having the authority to give it, displays insubordination.

Refusal by the employee to carry out the employer's instructions could lead to dismissal. But, before such an action could be taken, the investigating officer should ascertain whether the refusal to carry out instructions was, *inter alia*, serious, persistent and deliberate. If these factors cannot

be proved, the case will not hold up in court because a court of law considers many factors, such as the ones mentioned above before any employee can be discharged on account of insubordination. Principals should bear in mind that it is against the law to instruct educators to do work which is illegal for them to perform, or to instruct an educator to teach a subject he or she is not qualified to teach (Grogan 1997:117-118),

A classic example of insubordination was displayed by two educators at one of the Gauteng schools on the East Rand, who imposed their religion on the learners much to the disapproval of the principal and education authorities. These educators held prayer meetings with the learners of their classes before and after school. The prayer meetings were held in the name of a church called the Hope of Glory. The principal instructed the educators to stop involving the learners in the religion where Satan was a main issue. Another reason for disallowing them to hold prayer meetings was because they never asked permission from the principal nor the SGB of the school to practise their religion on the school premises. Lastly, the principal instructed them to stop henceforth with their prayer meetings because they held her up in the afternoon when she wanted to lock the classrooms and the gates (Mbonambi & Dladla 1998:2).

The two educators disobeyed the reasonable and lawful instructions of the principal. Instead, they instructed the learners whom they involved in their religion to hold the prayer meetings at the spot where the principal parks her car. The educators furthermore impudently told the principal that they would not stop with their prayer meetings because Satan was at the school. The departmental officers who failed to stop this practice were summoned to the school. Upon arriving at the school, the departmental officers found the two educators having a row with the principal. They shouted, talked at the top of their voices and pointed fingers at the principal. One of them went to the extent of labelling the principal an autocrat on leaving the principal and the departmental officers (Mbonambi & Dladla 1998:2).

It is a fact that section 15(1) of the Constitution (No. 108 of 1996) confers the right to freedom of religion, belief and opinion on an individual. It is unconstitutional to practise one's religion if the religious observances do not follow rules made by the appropriate public authorities (section 15(2)(a) of the Constitution, No. 108 of 1996). Lastly, educators should know that it is wrong to emphasise only one's own rights and values, when on the other hand the rights and values of others are ignored or overlooked.

Considering the unbecoming behaviour of the above-mentioned educators and their refusal to obey legitimate instructions of the principal and those of the departmental officers, it becomes clear that there is something wrong with the education system of our country, and that drastic steps must be taken to normalise the situation at schools. It is also high time that educators are informed that the rights enumerated under the Bill of Rights are not absolute (section 36(1) of the Constitution, No. 108 of 1996). The actions of the educators mentioned above, infringed the constitutional right of the principal who had been empowered by the Act to give lawful instructions to non-teaching staff and educators (Chapter 2, regulation C.3.2 of the PSA Regs, No. R. 679 of 1999).

2.4.8.3 Defiance

The word defiance is used when a person or group of people openly refuses to carry out instructions or to obey authorities; or when someone displays behaviour that defies a person who is vested with authority. Defiance as a form of refusing to carry out instructions is the highest degree of insubordination. An educator who defies education policies, rules, regulations, orders and procedures may be found guilty of insubordination (Dessler 1997:601). In this country, defiance was used by political activists when they openly and intentionally refused to abide by the regulations, rules and statutes laid down by the former National Party government. In order to understand the current use of the word in education, it is significant to consider the historical background of black education in South Africa (Kallaway 1984:12).

As long ago as 1920, educators in the former homeland of the Transkei defied the then government of the day by putting up their own schools which were funded and run by them. The reason why the schools were founded is because the founders were opposing the government and missionary schools which were perceived as oppressing blacks mentally and suppressing their cultural values as well as retarding the advancement of blacks (Edgar 1984:184-185). This was followed by country wide defiance. In the 1950s, educators defied the then National Party government by refusing to implement the policies of the Bantu Education system; as well as to popularise the ideology of separate development among the learners (Molteno 1984:96-97).

Defiance is a serious offence; more especially when an educator defies an authority openly in the presence of his or her colleagues. According to Dessler (1997:601-602) defiance done openly is a ground for dismissal because other employees in whose presence an employee displays such

behaviour may influence them to imitate and emulate him or her. In South Africa, black educators used defiance to fight for equality in education. In some instances defiance was unnecessarily overemphasised and absolutised to the detriment of the education of the country's black children. In this country, in the former black schools, defiance became rife subsequent to Mr Mandela's release in 1990. Educators defied the authorities for a number of political issues and on numerous occasions (Mothapo 1997:10).

At one stage, the work books for educators (better known as the green books) were taken to the erstwhile area offices of education in broad daylight where they were dumped by educators. This was done in defiance because educators did not want to use the work books for reasons better known to themselves. Secondly, the educators, *inter alia*, refused to carry out departmental instructions; to attend departmental courses and to participate in departmental sports activities. They also defied the education authorities by barring circuit inspectors and subject advisers from visiting schools. Thirdly, educators instructed school telephonists to defy education authorities by putting the telephone down on discovering that the caller was one of the education officers. Lastly, educators defied the authority of the School Management Councils, to such an extent that these councils were disbanded (Scholtz 1990:1-2).

In Daveyton, on Gauteng's East Rand, human relations at one of the schools were strained. Owing to this circumstance the SGB of the school instructed one of the educators to stay at home till such time as the educators' differences were sorted out. Following this instruction, another fifteen educators defied the SGB by also staying at home in support of their colleague, and some of the educators of this school openly defied parents by telling them that they would not teach learners before their problem was attended to. Because of the refusal of educators to teach, learners were seen climbing through classroom windows and running about aimlessly outside the classrooms for eight months (Khupiso & Pretorius 1998:4). At another school in Khayelitsha outside Cape Town, an educator stayed at home for eighteen months, receiving remuneration every month. She defied education officers by refusing to resume her duties (Jordan 1998:7).

The above sketched scenarios indicate how serious defiance may affect human and labour relations in schools as well as the day to day management of schools. Defiance constitutes an unfair labour practice against an employer (schedule 7, section 2(1) of the LRA, No. 66 of 1995). In terms of section 17(1)(c) of the EEA (No. 76 of 1998), an educator who disobeys or refuses to carry out lawful instructions of the employer shall be charged with insubordination. In addition to

this, Chapter 2, regulations C.1.1 and C.2.8 of the PSA Regs (No. R. 679 of 1999) stipulate that an employee shall be faithful to the Republic and honour the Constitution and respect and protect every person's dignity and her or his rights as contained in the Constitution.

2.4.8.4 Intimidation

Intimidation as a form of insubordination is viewed in a serious light because it infringes on the freedom and the rights of employee and employer (section 16(1); 21(1) & 22 of the Constitution, No. 108 of 1996). Intimidation is usually used by political movements or organisations at institutions of learning. The NECC, the COSAS, the AZASM and some of the SADTU members and their supporters are cited as examples of such organisations (Heart & Maphisa 1990:2, Smith 1993:4, Mokone 1996:17). Intimidation occurs when a person or a group of people sharing the same belief frighten others in order to force them do what they want them to do. Intimidation may be done publicly or secretly. A disguised person may intimidate the government by killing the leaders of a country or by burning down houses or businesses in order to force the government to yield to the opinion of his or her organisation (Ray 1999:2).

Intimidation can also be expressed by singing, speeches and facial expressions. In rugby, or any other sport, a team playing against another one may intimidate it before the match kicks off. The reason for doing this is to frighten the opponents and to build up self-confidence, because an old adage says: *you frighten your man, then he is half defeated*. The famous *haka* which is an intimidating action is normally performed by the All Blacks before the match starts. In the old days, tribesmen would pull fierce faces, while making frightening gestures that scared or frightened their opponents in order to build up self-confidence (Mulholland 1998:1). In schools that are situated in the townships, educators who lack commitment, professionalism and discipline intimidate education officers and principals in order to force them to yield to their demands.

In terms of Chapter 2, regulations C.1 up to C.5 of the PSA Regs (No. R. 679 of 1999), an educator as a public servant should be faithful and loyal to the officers of the government of the day. It is undemocratic for the educators to intimidate education officers and principals. In fact, everybody who holds a higher position should be respected and treated with courtesy. As professionals, educators should avoid and refrain from transgressing rules and regulations (Matseke 1999:12). Some of the SADTU members and their supporters usually intimidate principals and the government in furtherance of their interests or objectives. In terms of the law,

it is illegal to promote the interests of one's political party or one's union to the detriment of the management of schools (Chapter 2, regulation C.2.7 of the PSA Regs, No. R. 679 of 1999). The Constitution is also against individuals or groups of people who intimidate others at the workplace because intimidation tarnishes the dignity of the victims (section 10 of the Constitution, No. 108 of 1996).

Some ill-disciplined, unprofessional and wayward unionised educators intimidated the authorities by embarking on strikes during working hours to force the government to increase their salaries. Before they marched to the education offices, they forcefully removed learners and educators from the classrooms. Their action was a blatant intimidation which was aimed at scaring educators and learners away from schools and to force educators who were reluctant to join the public sector unions' strike to march with them (Mecoamere 1999:1). By virtue of their having formed an alliance with the ANC, some of the politicised SADTU members labour under the impression that non alliance and apolitical principals should be intimidated and ill-treated (Nkoto 1999:12).

Another example is that of the Soweto educators who embarked upon an illegal strike which forced the Department of Education to apply the principle of no work no pay. Having realised that their salaries had been deducted, following the illegal strike, the dissident educators forced the DET to pay back deductions made from their salaries. This was done by chasing all the Soweto principals away from schools. The "dismissed" principals stayed at home for three months receiving their remuneration. The intimidation used by SADTU did work because the officers of the DET were scared away from schools; and in order for the principals to resume their duties, the DET had to pay back the deductions made from their salaries (Mohale 1993:4).

2.4.8.5 Usurping the principal's role

A principal is an executive officer. He or she as an immediate manager is delegated the power by the employer to head the school; and he or she is provided with appropriate power and authority to manage his or her school effectively and efficiently (Chapter A, regulation A5.1 the PSA Regs, No. R. 1091 of 1994). There should be no one to unreasonably dispute the power and authority of the principal because he or she has been lawfully assigned the power to carry out the administrative and management duties of the school which include among others human resources

management, management of buildings and physical assets as well as the maintenance of discipline (Chapter A, regulations A4.1 & A4.2 of the PSA Regs, No. R. 1091 of 1994).

Any person who qualifies to be a principal is appointed by the head of the Education Department of the specific province. When signing appointment forms, a person who has applied for a principalship post enters into an employment agreement with the Provincial Education Department that he or she will play the role of a principal (section 6(1)(a) & (2) of the EEA, (No. 76 of 1998) & Annexure 2 of the PSA Regs, No. 103 of 1999). A principal is empowered by the provisions of the Regulations to perform the duties that are listed under the duties and responsibilities of educators (Chapter A, paragraph 4 of the EEA Regs, No. 222 of 1999). No one should interfere with the principal in his or her endeavour to perform his or her duty, nor should anyone usurp the principal's role. In terms of section 79(2) of the BCEA (No. 75 of 1997), an employee is prohibited from threatening another employee when executing his or her rightful duty.

At the time when the unrest was at its height in this country, the usurping of the principal's role started. Politics played the major role in this regard (cf. paragraphs 1.1 & 1.2). Every politicised educator in every institution of learning perceived himself or herself to be a principal. This was done because principals were regarded as collaborating with the dissolved National Party government (Smith 1993:4). The usurping of the principal's role recurred in the new dispensation. A case in point is the dismissal of a newly appointed principal in one of the schools in Soweto, whose role was usurped by educators (Mkhwanazi 1996:2). Some educators seemed not to differentiate between the role of an ordinary educator and that of a principal. As a result of this, they wanted to go beyond their job description which is clearly spelt out in Chapter A, paragraph 4.5 of the EEA Regs (No. 222 of 1999).

In their meeting held in 1990 in Alexandra to discuss the issues surrounding the suspension of their month-long strike, Soweto and Alexandra educators decided that the role of principals, deputy principals and heads of department should be usurped by educators. Among others, it must be mentioned that they unofficially disbanded satellite schools which were set up to relieve the burden of the existing schools, thereby instructing learners and educators to return to their mother schools. They illegally replaced heads of department who had been appointed in terms of the law with the unofficial subject committees whose members were their friends and who shared their beliefs. The time table, which was the responsibility of the principals to draft, was reduced

by educators to a maximum of 32 periods per week; and they instructed the principals and heads of department to teach full-time (Scholtz 1990:1).

The educators went to the extent of cancelling extra-mural activities. That is why even today we do not see educators remaining at school in the afternoons to supervise sporting activities. The line function of the Department of Education was adversely affected by the decision taken by the educators. No one at the schools seemed to be accountable, because school principals, deputy principals and heads of department were reduced to the level of ordinary educators, who taught not less than 18,6 hours per week. The educators registered learners, "planned" and "organised" the running of schools. The educators who unofficially served as members of subject committees instructed other educators not to prepare or to plan their lessons. The school principals and their top management were disallowed by educators to exercise control over the educators' professional work (Scholtz 1990:2).

Considering the above incidents, one is tempted to say that perhaps a precedent was created by the fact that our education system does not train principals, as it is the case with other countries. For instance, in America principals are trained and developed at assessment centres where their managerial skills are honed (Dessler 19997:181-183). As a result of the apparent unavailability of the assessment centers in this country, educators do not see any difference between them and principals. Even if this is the situation in our country, this does not permit them or give them licence to contravene statutes, regulations and the Constitution. In fact, it is unfair and constitutionally unacceptable for educators to usurp principal roles because in terms of section 7(1) of the LRA, the principal has the right to be protected against unfair labour practices; and his or her dignity must be protected (section 10 of the Constitution, No. 108 of 1996).

2.5 Phenomena having a bearing on misconduct

2.5.1 Bureaucracy and the education system

The education system has the characteristics of an organisation. One of the characteristics of the education system which is discernible is bureaucracy. According to Luthans (1998:517-518), bureaucracy as one of the characteristics of an organisation has its own characteristics. Among others he stresses the fact that labour is divided in accordance with competency in which positions are arranged in a hierarchy i.e. there are lower levels, middle levels and higher levels of operations

(Figures 2-2 & 3-1). In order to ensure uniformity, there are sets of rules within which the bureaucrats and their subordinates operate. Luthans (1998) argues that it is incumbent on the bureaucrats to maintain sound human relations and to manage labour relations effectively and efficiently. Upward mobility in the hierarchical structure is done on the basis of qualifications, seniority or achievement.

However, there are advantages and disadvantages of bureaucracy as an organisation structure. The following disadvantages are cited as an example: incompetent officers lack initiative and imagination, hide behind the cloak of bureaucracy and this results in the organisation not functioning properly. More often than not, the bureaucrats are not specialists in the positions they hold i.e. they have not been trained in human resources management, and this affects the productivity and the effectiveness of the organisation. The activities of human resources and organisational communication are not well co-ordinated, and this impedes the smooth running of the organisation which results in a lot of money and time being wasted. Bureaucrats take a long time before they give attention to a problem because of rules and procedures that have been laid down, and this leads to bureaucratic red tape (Luthans 1998:519-520).

What is said of bureaucracy in the private sector's organisation also holds true for bureaucracy in the public education sector's organisation. With the advent of the new dispensation in South Africa unusual appointments of the officers who were to fill vacant posts in the higher echelons of the education public sector were made. Most of the officers who were appointed were post level one educators holding positions in SADTU or affiliated with it, while others were recruited by their political colleagues from the private sectors. Friends, relatives, family members and siblings who knew nothing about management and leadership in education were also appointed in higher positions (Matuna 1998:30). The following diagram shows how appointment of officers in the management echelon of the Education Department of the Free State Provincial Administration was done in 1995:

Figure 2-3: Deviation from procedures, processes and requirements

POST	PREVIOUS POST	MANAGERIAL EXPERIENCE	AFFILIATION
Deputy Director General	lecturer	none	MEC Associate
Chief Director Education	teacher	none	SADTU
Director Auxiliary Services	clerk	none	MEC Associate
Director - College of Education	lecturer	none	MEC Associate
Director - Sports and Recreation	principal	one year	SADTU
Director - Special Needs	teacher	none	SADTU
Director - Human Resources	clerk	none	MEC Associate
Director - General and Further Education	inspector	four years	MEC Associate
Director - Specialised Support Services	teacher	none	SADTU
Director - Lifelong Learning	subject advisor	none	SADTU
Director - Information Services and Heritage	lecturer	none	MEC Associate
Director - Financial Management	Assistant Director	four years	Non-affiliate

The terms in the last column of Figure 2-3 are inferred from Mphahlele, Takala and Prinsloo's (1995) report.

During the latter half of 1994, the first MEC for education in the Free State Department of Education established a strategic management team which was given the brief of looking into the education structure that would be suitable for the Free State province (Mphahlele, Takala & Prinsloo 1995:51). According to the informants, all the officers depicted in Figure 2-3, except the director for finance and auxiliary services served on the MEC's strategic management team. It was furthermore established that the director for financial management was appointed in spite of the fact that he was non-affiliate because there was no one who could be charged with financial responsibility. On the other hand, the director for auxiliary services was appointed because he used to disclose the former Qwaqwa home land's sensitive information to the chief director for education and the other members of the strategic management team.

In light of Figure 2-3, it becomes clear that only two officers namely the Director for Financial Management as well as the Director for General and Further Education seemed to have experience in financial and human resources management respectively. It must furthermore be mentioned that the chief director for education was appointed a deputy principal of a school in August 1994. However, he never performed the duties attached to the post of a deputy principal because he was never at school as he was serving on the MEC's strategic management team. It is because of this reason that Figure 2-3 depicts him as a teacher without any managerial experience.

According to the findings of Mphahlele *et al.*(1995:48), the chief director for education was, among others, appointed because he led SADTU which is a very strong teachers' union, not necessarily on the basis of managerial experience in education.

Another point which needs to be mentioned is that an officer who was appointed as a director for human resources was never in the public education sector before, as he was an employee of Sparta Beef Cattle Feeders - a farm situated 15 km north east of Marquard (a small town in the eastern Free State). According to the findings of Mphahlele *et al.* (1995:54-55) one of the reasons advanced by the interview panel as to why he was appointed is that he was a practising personnel practitioner at top level. The phrase "practising personnel practitioner at top level" is vague and confusing. This phrase does not tell whether this man was a manager or a team leader.

Furthermore, Mphahlele *et al.* (1995:24-42) reported that the processes and procedures followed when appointing officers in the public sector were not in accordance with the national norms, and that the interview panel did not meet the stipulations and the norms of the Public Service Commission. For example, the applications received shortly after the closing date were not considered; candidates who complied with the requirements were not short listed for an interview; candidates who did not comply with the prescription were short listed; some of the recommendations were signed by the director-general, whereas some were not etc. In the light of the foregoing exposition, it becomes clear that nepotism and corruption abound in the Free State education department.

As may be seen from Figure 2-3, people who lack experience are appointed in management positions, when highly experienced people, with successful track records are marginalised and sidelined. When South Africa became a democratic country, one would have thought that the appointments of officers would reflect all the people of South Africa, seeing that the country is rich in human resources. But, to everybody's surprise, the government appointed incompetent ANC youths, some of whom studied overseas, and who did not know the functioning of the South African education system. Furthermore, the present government made a mistake by ignoring the fact that a dedicated educator is demotivated if an insolent political party colleague or an ANC office bearer is promoted (Malatjie 1997:7, Matseke 1998:11).

Incompetence; inexperienced officers; abdication of responsibility by bureaucrats; appointment of officers who have not been trained in the position they hold; hierarchy and procedures have a

bearing on misconduct. In terms of section 17(1)(d) of the EEA (No. 76 of 1998), an educator who idles away is guilty of misconduct. However, incidents of misconduct that manifest themselves in education are rather tricky and complex, in as much as it is difficult to apportion blame on the educator or on the bureaucrats. A Khayelitsha educator is cited as an example. This educator stayed away from school for eighteen months while getting her salary every month (cf. paragraph 2.5.1).

The education officers were told about this case, but nothing was done at the time when the educator, despite an instruction, refused to resume her duty (Jordan 1998:7). The deduction which is made is that the officers did not have knowledge of human resources management and the procedures as well as rules pertaining to the management of misconduct. Alternatively the officers lacked experience and competence which led to them being afraid of taking decisions. It becomes abundantly clear that incompetence and lack of experience contribute to the negligence of duty.

Another similar case to that of the Khayelitsha educator is that of an educator at Daveyton, on Gauteng's East Rand (cf. paragraph 2.5.2). This educator stayed at home for eight months receiving her salary every month. When the Department of Education received a report about this incident, the officer in charge told the Sunday Times reporters that the Department of Education heard about the incident for the first time, when according to reliable sources known to the Sunday Times the matter was reported to the district office of education several times by the parents of that school (Khupiso & Pretorius 1998:4).

The case of this educator suggests that communication between the school and the Department of Education is not well co-ordinated. This case also suggests that lack of experience and incompetence of the bureaucrats played a vital role in prompting educators to commit misconduct. In fact, the education officer in charge of this school contravened section 17(1)(d) of the EEA (No. 76 of 1998), in that he neglected his duty or alternatively he was indolent in carrying out his duty.

Bengu (1998:1) reported that educators of three technical schools in Soweto were paid salaries for two years while doing nothing because of the lack of facilities and equipment at those centres. Learners at those centres were also disadvantaged by the prevailing circumstances. Because of laxness, educators had no choice but to award practical marks to learners who never did practical

work, and who were seen basking in the sun everyday doing nothing. In terms of section 17(1)(d)(m) of the EEA (No. 76 of 1998), an educator who is absent from duty or who neglects duty should be charged on account of misconduct. But, in the case of these educators, it is difficult to lay a charge against them because the three technical schools were not supplied with facilities and equipment. The director for provisioning in the Department of Education is to be blamed; and he or she should be charged with misconduct in terms of section 17(1)(d) of the EEA (No. 76 of 1998).

2.5.2 Collegiality among educators

The old proverb that says birds of a feather flock together became true during the political turbulence when black educators exercised collegiality for a good cause or practice (paragraphs 1.1 & 1.2). The aim of this collegiality was to look for a structure or a body to which they could belong and have equal authority when taking decisions that would bind every educator irrespective of the peculiarity of the decision. Another reason which prompted the formation of collegiality was that they were opposed to the bureaucratic structure which has the image of bureaucratic red tape, whereas collegiality gives way to professional authority and individual decision making. Collegiality allows educators to share common values, beliefs and to discuss problems pertaining to conditions of employment (Bush 1994:38).

Collegial theory is an attractive model for educators because every educator feels free to discuss and to reach an agreement which binds every participant. Collegiality also cultivates a sense of belonging and ownership among the educators. Most unfortunately, collegiality among the black educators was used mostly for politics. All the decisions taken by educators in a structured meeting were honoured. If for instance, educators decided to boycott an occasion that was organised by the then National Party government, they did so because they felt that the decision was theirs, and that they were bound to support it. Collegiality helps educators to achieve their goals because they talk as one voice. A case in point is the black South African educators who achieved wonders, but also caused havoc and destruction in institutions of learning meant for blacks (Bush 1994:39, paragraphs 1.1 & 1.2).

In most cases misconduct at schools is committed as a result of the decision taken by educators in a joint meeting. In the case where all educators commit misconduct, it becomes complex or tricky to lay a charge against an individual. In a meeting held by residents of Mamelodi, outside

Pretoria, police harassed the residents, and this led to the local educators taking a decision to stay away from schools. The stay away was organised at the time when the learners were writing their mid year examinations. The stay away from work constitutes misconduct because it contravenes section 17(m) of the EEA (No. 76 of 1998). In the case of these educators who stayed away from work, it was difficult for the Department of Education to institute punitive measures. In fact, the DET which wanted to apply the principle of no work no pay failed to do that (Heard & Mapisa 1990:2).

In Bohlakong near Bethlehem, in the Free State, fifty-four educators were arrested following illegal labour action. The police had no choice but to arrest the educators who interfered with the day to day administration of the local area's Office of Education. Fifty educators who called themselves the Bohlakong Progressive Teachers' Union went to the local area office of education to stage an illegal sit-in. Prior to the illegal sit-in, the educators had reached consensus that they would not move unless their colleagues were released. Collegiality helped in the release of the fifty-four educators. Sharing a common set of values by educators forced the authorities to re-open negotiations. This case is also tricky and complex for one to lay a charge of misconduct (Heard & Mapisa 1990:2).

Another case where abuse of collegiality played a role in committing misconduct is that of educators at one of the schools in Gauteng Province. The SGB instructed one of the educators of this school to stay at home while her problem was being sorted out. Fifteen educators of this school held an illegal meeting where a decision was taken that they were not going to report for duty till such time as their colleague was called back by the SGB (Khupiso & Pretorius 1998:4). The stay away by the educators, while the learners are left without educators, is in conflict with section 17(d)(m) of the EEA (No. 76 of 1998) and section 29(1)(a)(b) of the Constitution (No. 108 of 1996). Collegiality also played a role in committing misconduct prior to the formation of SADTU. The Soweto and Alexandra educators held a meeting where consensus was reached that a month-long strike would be suspended; and would be replaced with defiance of the inspectors and subject advisers (Scholtz 1990:2). As has already been mentioned in paragraph 2.5.4, defiance constitutes misconduct.

2.5.3 Subjectivity among educators

Some educators do not identify themselves with the education system; and they perceive organisational situations, events and activities of the bureaucrats differently. They are selective in attaching meaning to the organisation as a whole. They tend to select those events and situations which work for the education system and blow them up out of proportion. If for instance, a principal controls work effectively, and demands a high standard of work from educators, they make use of this situation by attaching a negative meaning to it. According to the subjectivity theories, some educators tend to ignore the reality that is there in the education bureaucratic structure and this leads to them deriving from the bureaucratic structure their own values and beliefs which are in most cases subjective. It has also been observed that some educators focus on the individual member of the organisation for reasons of their own (Bush 1994:43-44).

When interacting with the organisation and its bureaucrats, some educators interpret events, situations and the activities of the organisation subjectively. Such educators are not always satisfied with the organisation and its management. They always capitalise on the failure of the organisation, but fail to give credit to the bureaucrats where they deserve it. The subjective theories stress the fact that subjective educators within the education system use their malicious tongues to destroy the organisation. They are influential and critical; and they therefore do not observe legitimacy and professionalism within the education system. Subjective educators are indolent and insolent; and as a defence mechanism, they mobilise other educators and learners who hero-worship them, against the principals. Lastly, it can be said that they do not teach seriously, but always lodge grievances and demands with the authorities (Bush 1994:44-45).

Subjectivity among black educators has a bearing on misconduct which led to the prevailing situation in the schools which are situated in the areas that were known as black areas in South Africa. The subjective decision which was taken by the then National Education Union of South Africa (NEUSA) in a meeting which was attended by the Soweto and Alexandra educators was a turning point in the history of the education of children attending township schools. That meeting surprised everybody because the issue was no longer the DET, but it was personalised in that the focus was on individuals. The meeting decided that inspectors and subject advisers would be barred from visiting schools. According to that meeting, the inspectors and subject advisers harass, rather than help educators in their tasks. The reason advanced by these educators was

subjective because it was focusing only on an individual who might have harassed educators (Scholtz 1990:1-3).

Before one could pass his or her judgement, one should bear in mind that people are not the same, and that it is wrong to expect people to operate in the same way. It is true that there might have been officials and principals who used control and supervision to victimise educators. However, it must also be borne in mind that it is wrong to generalise and afterwards claim that all officials and principals victimised educators (Mothapo 1997:10). The subjective decision that was taken by NEUSA percolated very fast through to other regions in South Africa, till it permeated the whole of South Africa. Even today, there are some educators who commit misconduct by refusing principals access to their professional work, because supervision is still an anathema to them, as some go to the extent of taking class visit from principals as interference with their work. The worst part of it is that the Department of Education put a moratorium on control and supervision of educators because of the subjective decision that was taken by educators (Mothapo 1997:10).

As has already been mentioned, refusing to submit to authority and control as well as barring officials from visiting schools constitutes misconduct (cf. paragraphs 2.4.4 & 2.5.2). If it had not been for subjectivity among the educators, or among those who derived the subjective meaning from the school visit by the officials and the class visit by the principals, there would not have been appalling conditions at schools that are situated in the townships. Today, township schools suffer the consequences of barring officials and principals from exercising control over educators' professional work. The following are mentioned as examples of the results of lack of control in schools: high failure rate; lack of discipline; insolence and indolence; laissez-faire attitude; defiance; lawlessness and anarchy (Mothapo 1997:10, Matuna 1998:30, Mabunda 1998:4, Matseke 1998:11).

2.5.4 Ambiguity and hidden agenda

Ambiguity theories can be proved true in South African education, more especially in black schools, if one were to match theory with practice. Educators' hidden agendas complicated the educational issues to such an extent that ambiguity becomes abundantly clear in education. Ambiguity theories have to do with uncertain and complex situations, events and conditions which manifest themselves in the education public sector. The instability and unpredictability at schools

support the notion that ambiguity is prevalent in the South African education system (Bush 1994:45). The question of the so-called temporary educators and the redeployment of educators render schools unstable and unpredictable and this causes uncertainty among all educators in South Africa (van de Venter 1998:30).

In schools that are known as black schools, anarchy and lawlessness are caused by those who call themselves stake-holders (cf. paragraphs 2.3.3; 2.4.4; & 2.5.5). Because of anarchy and lawlessness, the goals of schools are ambiguous. To some of the black learners and the black educators, schools are there to achieve only political goals. Mabunda (1998:4) argues that the black learners do not do well in the grade twelve external examinations because they still believe that politics is better than education. He furthermore warns that black schooling will be doomed to extinction if black learners and black educators do not divorce themselves from politics and start to seriously aim at attaining educational goals. Because of the confusion which was brought about by politics in education, most of the township schools do not understand their processes. Hence they operate on a trial and error basis which leads to a high failure rate (Table 4-1 & Figure 5-1).

The bureaucrats are never in their offices for they hold meetings whose objectives are unclear because no decision emanating from these meetings are implemented. These bureaucrats are uncertain about what is expected of them. For them holding meetings every day is working (Malatjie 1997:7). Ambiguity and educators' hidden agendas have a bearing on misconduct. Educators who were employed after July 1, 1996 are said to be "in excess". It is true that in their letters of appointment, it was mentioned that in terms of section 6(1) of the EEA (No. 76 of 1998) they were temporarily appointed. However, it must also be borne in mind that it is difficult for a person who lives in a country where unemployment is rife to admit that his or her duty can be terminated after working for more than three years.

The uncertainty regarding the appointment of the temporary educators prompted educators to commit misconduct. Sefara (1999:3) reported that an educator attached to a school in Giyana in Northern Province fought the principal over redeployment and rationalisation. It is reported that the principal earlier gave the educator a letter in which she was informed that she was redundant, and that she was to be redeployed to another school where the service of a temporary educator would be terminated. When the educator arrived at the school the following day to report for duty, the principal refused to hand the time register over to the educator to record the time at

which she arrived at school. An argument which resulted in fighting started. The educator used profane language, and resorted to an assortment of objects with which she hit the principal. All these constituted misconduct in terms of section 17(1)(g) of the EEA (No. 76 of 1998).

In another incident, reported by Shiba (1999:6), educators abandoned learners during school hours to hold meetings during which the question of the temporary educators was going to be discussed. Holding meetings during school hours is in conflict with section 17(1)(d)(m) of EEA (No. 76 of 1998), in that the educators neglected the learners, or alternatively they were indolent in carrying out duties attached to their posts, and lastly, they absented themselves from schools or duties without leave or permission from the employer.

Matuna (1998:14) stresses the fact that there is a lot of uncertainty and complexity in education because of new policies which are introduced before the basics like discipline are put right at schools. He is also against the fact that bureaucrats rush to destroy that which is working, in favour of a new system which has not been planned thoroughly. Curriculum 2005 is mentioned as an example of one of the things that are hastily implemented by the government before considering the nitty-gritty. He furthermore points out that individuals with strange agendas negatively influence decision making in education.

Perhaps at this juncture the influence of the teacher unions which makes it difficult for one to determine whether it is the government or the teacher unions that run the affairs of the public education sector should be mentioned. For example, it is this influence that prompts some educators who hold positions in SADTU to commit misconduct intentionally or unintentionally because they are aware that they are in the majority, and that the government is lenient when dealing with them (cf. paragraph 2.3.2). It is this influence that causes the tension which exists between the teacher unions, central government and the provincial governments, concerning the transformation of education in this country (van de Venter 1998:30).

The hidden agenda was also evident when the Hoopstad educators called the education officer pretending that there was an urgent educational matter to be discussed; only for him to find that they intended to hold him hostage (cf. paragraph 2.3.2). The Allanridge educators mentioned earlier in paragraph 2.3.2 are not exceptions. These educators marched to the District Office of Education with a hidden agenda. They pretended that they were going to demonstrate peacefully, when in actual fact they planned to stage a sit in and to hold District officers hostage (cf.

paragraph 2.3.4). It is for the above mentioned reasons that Shange (1999:10) recommends that the ruling party should emulate the actions of the former British Prime Minister - Margaret Thatcher - who acted very harshly against unions who destabilised the public and the private sectors in Britain.

2.6 Conclusion

This chapter reveals that politics contributed to a laissez-faire management of schools. The chapter reviews the situation in which anarchy, lawlessness, lack of respect and the intimidation of officials and principals prevailed. The chaotic situation which is not suitable for educative teaching and meaningful learning prompts the educators to contravene codes of conduct and provisions of the Acts and Regulations. The contravention of the aforementioned adversely affects the school as an organisation. In the township schools, the function of the structure of an organisation is not clear, in that the role of the principal, the learners and the educators are influenced by misconduct which is prevalent at these schools.

Misconduct seems to have a devastating impact on the productivity, effectiveness and efficiency of the township schools. Many competent principals and educators opted for voluntary severance packages because they could not manage highly politicised educators. The matters of unionised educators is also a factor which contributed to the termination of most effective principals because it was difficult and impossible for them to manage labour relations effectively and efficiently. From the discussion of this chapter, it became clear that organisational behaviour, standards, educational values and norms are adversely affected by misconduct. It also became evident that uncertainty, incompetence and conformity play a role in contributing to the commitment of misconduct by educators.