

**PUBLIC SERVICE LABOUR RELATIONS: CENTRALISED
COLLECTIVE BARGAINING AND SOCIAL DIALOGUE IN THE PUBLIC
SERVICE OF SOUTH AFRICA (1997 TO 2007)**

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A thesis submitted in partial fulfilment of the requirements for the degree of
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TEN KEY WORDS

1. Labour Relations Act 66 of 1995
2. Public Service Co-ordinating Bargaining Council (PSCBC)
3. Public service trade union membership
4. Public service collective bargaining
5. Voting weights of parties admitted to PSCBC
6. PSCBC objectives
7. Dispute resolution
8. COSATU, FEDUSA, CONSAWU
9. Sectoral councils
10. Definition of the public service



ABSTRACT

PUBLIC SERVICE LABOUR RELATIONS: CENTRALISED COLLECTIVE BARGAINING AND SOCIAL DIALOGUE IN THE PUBLIC SERVICE OF SOUTH AFRICA (1997 TO 2007)

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Through South African labour legislation, bargaining councils are empowered to conclude collective agreements between employers and trade unions. While bargaining councils were created for virtually every sector within the South African private sector, only one bargaining council exists for the public sector. This public sector bargaining council is known as the Public Service Co-ordinating Bargaining Council (PSCBC). The PSCBC subsequently established four sectoral councils to further collectively bargain on matters pertaining to sectoral issues relevant to the sector it represents. However, the PSCBC remains the apex of these four public service sectoral bargaining councils.

This thesis focuses on how the Public Service Co-ordinating Bargaining Council (PSCBC) contributes to social dialogue within South African public service. This thesis seeks to fill a significant literature gap on collective bargaining as accomplished by the PSCBC. The thesis briefly examines the history of collective bargaining in the South African public service. The research methodology utilised includes information gleaned from annual reports published by the PSCBC. Interviews of selected stakeholders such as government officials and labour organisations involved in the PSCBC were conducted. The PSCBC objectives are identified and analysed against the performance of the PSCBC for the period 1997 to 2007. The relevant PSCBC role players are identified. The power realities between

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these role players are reflected. The criteria for remaining a party to these PSCBC will be explained.

The thesis holds that historically an adversarial relationship existed between the state as employer and the recognised trade unions. The establishment of the PSCBC created the opportunity for the historical adversaries between an employer and trade union to be converted into social dialogue interactions, which are commonly believed to be a better approach in resolving their differences.

October 2007



DECLARATION

I declare that *Public Service Labour Relations: Centralised Collective bargaining and social dialogue in the public service of South Africa (1997 to 2007)* is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Arthur Russel Clarke

October 2007



Signed.....

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LIST OF ACRONYMS

CCMA	Commission for Conciliation, Mediation and Arbitration
CONSAWU	Confederation of South African Workers Unions
COSATU	Congress of South African Trade Unions
DENOSA	Democratic Nursing Organisation of South Africa
DPSA	Department of Public Service and Administration
ELRC	Education Labour Relations Council
FEDUSA	Federation of Unions of South Africa
GPSSBC	General Public Service Sector Bargaining Council
HOSPERSA	Health and Other Service Personnel Trade Union of South Africa
ILO	International Labour Organisation
IMATU	Independent Municipal and Allied Trade union
LRA	Labour Relations Act, No 66 of 1995 (as amended)
NAPTOSA	National Professional Teachers Organisation of South Africa
NATU	National Teachers' Union
NEDLAC	National Economic, Development Labour Council
NEHAWU	National Education Health and Allied Workers Union
NIA	National Intelligence Agency
NPSWU	National Public Service Workers Union
NUPSAW	National Union of Public Servants and Allied Workers
PAWUSA	Public and Allied Workers Union of South Africa
PHWSBC	Public Health and Welfare Sector Bargaining Council
POPCRU	Police and Prison Civil Rights Union
PSA	Public Servants Association
PSCBC	Public Service Co-ordinating Bargaining Council
SACC	South African Council of Churches
SADNU	South African Democratic Nurses Union

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SADTU	South African Democratic Teachers Union
SALGA	South African Local Government Association
SAMWU	South African Municipal Workers Union
SANDF	South African National Defence Force
SAOU	Suid Afrikaanse Onderwysers Unie
SAPU	South African Police Union
SASAWU	South Africa State and Allied Workers Union
SASS	South African Secret Service
SAUVE	South African Union of Vocational Educators
SSSBC	Safety and Security Sector Bargaining Council
UN	United Nations
UNIPSA	United Public Servants Association

The terms Public Service Co-ordinating Bargaining (PSCBC) and Council are used interchangeable and means the same.



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CHAPTER 1: BACKGROUND AND CONTEXT

1.1. Introduction

During this thesis the author will resolve to indicate that the employer and employee relationship is of the utmost importance in a social dialogue environment and that such a relationship demands preservation to the end for social dialogue to succeed.

The Public Service Co-ordinating Bargaining Council (PSCBC) was established towards the end of 1997. Since 1997 the public sector has experienced strikes during 1997, 1999, 2004 and 2007. The June 2007 public service strike was the longest public service strike experienced in a democratic South Africa. The state as employer and its employee's represented by various trade unions were in dispute over wage increases, medical aid benefits, housing allowance, scarce skills allowances, and a host of other benefits commonly encapsulated in a package that the state and the trade unions had to negotiate in a social dialogue environment.

Once engulfed in the world of work, relationships start to form. One such relationship is that between the employer and the employee. Whether the person is employed in the private sector or in the public sector, the employer-employee relationship exists. In South Africa the relationship is borne out of common law and reinforced by the contract of employment. Labour laws are enforcement through the labour courts or other bodies such the Commission for Conciliation Mediation and Arbitration (CCMA) or bargaining councils that has the authority to adjudicate labour disputes. In a democracy the employment relationship is bound to experience times when the parties involved agree, but also times when the parties disagree. The 2007 strike action embarked upon by all the recognised public service trade unions indicated a perceived interruption in social dialogue

interactions in the employer and employee relationship in the public service.

In South Africa the parties in the 'world of work' may be organised and may call on their constitutional right to either strike or implement a lockout should there be a deadlock in their social dialogue interactions. These are their rights; however, the exercise of those rights in most cases involves power play, mediation and or adjudication by a third party. A possible counter measure for the aforementioned means of collective dispute resolution could be social dialogue. Dexter (2003:8) indicates "*social dialogue is about building trust*"... (between the employer and trade unions)... "*and reaping rewards of an inclusive society.*" While Fashoyin (2007:9) states "*social dialogue is the sharing of decision-making authority with those with whom it is dialoguing.*"

This thesis focuses on collective bargaining and social dialogue in the public sector, specifically as practiced by the Public Service Coordinating Bargaining Council (PSCBC). The chapter is organised into four sections. Firstly, the background and context of collective bargaining and social dialogue in South Africa is provided. Nine and a half years has lapsed since a democratic collective bargaining structure was introduced to the South African public service. The democratisation of South African public service collective bargaining and social dialogue did not happen in isolation; hence the PSCBC was established to advance such collective bargaining and social dialogue. The Second section discusses the objectives and the significance of this study. The third section explains the research methodology and its limitations used to ensure the accomplishment of the study objectives. Lastly, the chapter ends with an outline of the structure of the research report.

1.2. Collective bargaining and social dialogue

This thesis is written nine and a half years after the inception of the PSCBC in December 1997, in total thirteen years since the advent of democracy in South Africa in April 1994 has lapsed. During this time trade unionism in South Africa has changed from a vehicle utilised to fight an oppressive political system, to a vehicle for advancing the principle of social dialogue between the parties in the employment arena. The public sector is no stranger to industrial action and in the past, public service employees, including nurses, teachers and police officers, embarked on national protest actions. Since the dawn of democracy in South Africa in April 1994 the public service experienced its first major public service strike in 1997. Accordingly, the secretary of the PSCBC, Shamira Huluman (2003:16) in a speech, delivered at an International Labour Organization (ILO) conference at the South Asia Sub-regional Seminar in Kathmandu, Nepal during December 2003, said

“...the parties in the PSCBC failed to reach agreement over wages in the South African public service in 1997, 1999 and 2004 and disputes were declared, followed by industrial or strike action.”

However, these strike actions lasted only for short periods. Since the 2001 multi-term wage agreement, organised labour at the PSCBC viewed the multi-term wage agreement as an annoyance point. When the state, as employer proposed a new multi-term wage agreement during the 2004 wage negotiations, organised labour rejected this proposal. Therefore, the parties at the PSCBC could not reach an agreement during 2004. Organised labour embarked on industrial action, protected in terms of the Labour Legislation. The state as employer unilaterally implemented the 2004 multi-term wage agreement. The PSCBC parties waited for the 2004 agreement to run its course. This meant that the scene was set for the 2007 round of wage negotiations at the PSCBC. Huluman (2003:16) indicates that prior to the 2007 industrial action, the “*state as employer*

adopted a no work no pay rule and the strikes did not last more than two days". Although the same principle of no work no pay was adopted for the 2007 industrial action, the trade unions adopted a hard stance and their members embarked on strike for 28 working days.

Collective Bargaining is found throughout South Africa. The forum for collective bargaining in the Public Service is the Public Service Coordinating Bargaining Council (PSCBC). In general people outside of the public service are unfamiliar with the functions of the PSCBC and a need exists to research and disseminate information about the functions of the PSCBC. In the past, the most frequent time that the PSCBC would feature in the media would be when the council was engaged in wage negotiations. The PSCBC events leading up to 1 June 2007 and for the duration of the period of industrial action, the media reporting changed drastically and became more frequent. With developments at the PSCBC being reported in the print and other forms of media on a more regular basis, for example the newspaper reports in The Cape Argus (11 April 2007: 12), The Sunday Times articles (26 June 2007), and DPSA press releases (2, 3, 13,14 and 22 June 2007).¹ Jasson Da Costa (11 April 2007:12) indicated that during *"April 2007 the trade unions and government began a month long process of conciliation with a two-day meeting (at the PSCBC) in Pretoria in a bid to avert an indefinite strike action by almost a million public servants, including teachers. This comes after wage negotiations between government and organised labour representing eight unions reached a deadlock."*

The trade unions want to change the three-year period of agreements (specifically the wage agreement) to annual agreements. As reported by Jasson Da Costa (11 April 2007:12) *"the trade unions at the PSCBC wanted a single-term agreement to be renegotiated every year."*

¹ An internet search on the GOOGLE website for the 2007 public service strike would provide the reader with 63200 related results.

The 2007 round of wage negotiations also ended in a deadlock with industrial action that followed. In contrast to the previous public service industrial action, the 2007 strike lasted for a period of 28 calendar days². For the period of 1 June to 28 June 2007, public servants were out on strike, recording the longest period in recent history that a deadlock and subsequent industrial action of this nature lasted within the public service.

During any form of industrial action there are always losers, hence, industrial action should never be popular! According to Israelstam (31 May 2006:1)

“...the employers suffer because of a lack of production or service delivery. The employees, embarking on such industrial action, suffer because of a lack of income while embarking on industrial action.”

An alternative approach to such industrial action could be ‘social dialogue’. This requires that the role players in the public sector enter into public sector bargaining. Conditions are created that are conducive for organised labour and management at institutional level (even at the smallest public service institution) to engage one another around the negotiations table on matters pertinent to their circumstances. This could be an antidote to wildcat strikes or other forms of industrial action. Parsons (2001:140-141) seems to toil over a clear definition for ‘social dialogue’ and argues, *“...the concept of social dialogue is an elusive but pervasive one.”* He mentions, *“internationally the concept of social dialogue is known under various labels such as ‘social capital’; ‘civil society’, ‘civil engagement’; ‘tripartism’; and ‘corporatism’.”* Parsons settles on the definition of *“social dialogue as the ability of the people to work in their enlightened self-interest for common purposes in groups and organisations.”* He states, *“trust, between the parties, is seen as an underlying factor that should be established and maintained to have successful social dialogue.”*

² The does not refer to normal working days, i.e. Mondays to Fridays, as the public service provides a twenty four service, seven days a week in certain instance which was also affected by the strike action.

The International Labour Organization (ILO) (www.ilo.org/public/english/dialogue/ifpdial/areas/social.htm) defines social dialogue as including

“All types of negotiation, consultation or simply exchange of information between, or among, representatives of... employers and workers, on issues of common interest relating to economic and social policy. It can exist... as bipartite relations only between labour and management... Consultation can be informal or institutionalised, and often it is a combination of the two. It can take place at the national, regional or at enterprise level... The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advances social and industrial peace and stability and boost economic progress.”

The ILO (www.ilo.org/public/english/dialogue/ifpdial/areas/social.htm) continues and sets

“Strong, independent workers and employers organizations with the technical capacity and the access to relevant information to participate in social dialogue; the political will and commitment to engage in social dialogue on the part of all the parties; the respect for the fundamental rights of freedom of association and collective bargaining; and appropriate institutional support as the enabling conditions of social dialogue.”

The ILO (www.ilo.org/public/english/dialogue/ifpdial/areas/social.htm) indicates that the state promotes social dialogue by creating the stable political climate for the parties to the social dialogue arena to operate freely and without fear through support mechanisms like creating the necessary legal framework. To this extent the South African Parliament has promulgated various labour specific legislations of which the 1995 Labour Relations Act (LRA) sets out forms for collective bargaining and social dialogue for South African workplaces. The National Economic Development and Labour Council (NEDLAC) is another example of how the South African state aids in creating social dialogue institutions.

Parsons (2006:9) indicates, “...*globally an estimated 50 countries have similar structures to National Economic Development and Labour Council (NEDLAC).*” After acknowledging that a perfect social dialogue model does not exist, Mkhize (2003:25) sets the principles that could make social dialogue effective. Mkhize says that

“...firstly the parties must have a common purpose and vision, secondly, all stakeholders must partake in the process and thirdly, mandating with constituencies, consultation and decision-making time must be taken into account.”

Lastly, Naidoo (2001:3) offers perhaps the most straightforward definition for social dialogue by indicating that in South Africa social dialogue can be described as

“...a process of institutional exchange of views, consultation and agreement making between various representative constituencies including, but not restricted to, trade union, employers organisations and the government.”

The dawn of democracy in April 1994 set in motion sweeping changes from what was experienced under the ‘old guard’. One such change was embracing trade unions around the bargaining table. And by so doing contribute to labour peace within the public service and taking advantage of the outcome of social dialogue processes. Israelstam (31 May 2006:1) points out that

“...the advantages of social dialogue could be swift conclusion to wage negotiations, elimination or reduction of ill will caused by industrial action, saving of the money that could be lost during the strike/ lock-out due to non-payment of employees wages or to industrial sabotage as well as violence, interdicts and lost of service delivery, the avoidance of injury and loss of life.”

One of the changes that the post-1994 labour legislation brought about is the creation of social dialogue institutions such as the National Economic Development and Labour Council (NEDLAC), the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA), and more

specifically to the public service, the establishment of the Public Service Co-ordinating Bargaining Council (PSCBC).

For the first time the public service in South Africa was completely included in the social dialogue arena. Through legislation the Public Service Co-ordinating Bargaining Council (PSCBC) was established for the public service. Now the state as employer and its employees (through the recognised trade unions) could meet around the bargaining table, albeit at a centralised level.

An institution for social dialogue in the public service was formed. According to the SALB (2005:7)

“The Public Service Co-ordinating Bargaining Council (PSCBC) has been able to stabilise relations in the public service and move the parties from a highly adversarial environment to a stage where the parties engage”.

The ordinary public servant, not exposed to the workings of the PSCBC, will be surprised to learn that the PSCBC has influence over much of his/her service conditions. The PSCBC discusses a multitude of matters and collective agreements are reached over employment benefits and the like. But just how does the Public Service Co-ordinating Bargaining Council (PSCBC) achieve social dialogue within the South African public service?

1.3. Problem statement and research question

Currently, the collective bargaining and social dialogue process in the South African public sector is new, fractious and awkward and is still in the process of developing. The Public Service Co-ordinating Bargaining Council (PSCBC) was established by legislation to provide a forum for collective bargaining and social dialogue in the South African public service. Events such as the increasing number of strikes, widespread dissatisfaction and the increase length of time it takes to resolve disputes

suggests that the PSCBC may not be functioning optimally and can be improved. A need exists to investigate how the collective bargaining and social dialogue arena for the public service currently functions.³

1.4. Objective and significance of the thesis

The general and primary objective of this investigation is to examine how the Public Service Co-ordinating Bargaining Council (PSCBC) implements centralised collective bargaining through social dialogue within the South African public service.

The broad objective is divided into a number of specific secondary objectives including:

1. To review the existing literature and define collective bargaining, social dialogue, and identifying what is the Public Service in South Africa.
2. To investigate the objectives that the PSCBC has set for itself. Whether those self-imposed objectives are met and whether they contribute to the enhancement of public service social dialogue.
3. To provide a model representation of the structure of the PSCBC, identify the stakeholders, parties and their power within the Public Service Co-ordinating Bargaining Council (PSCBC).

³ There was a possibility, at the time of writing this thesis, that the current social dialogue arena could be changed. This change will be a consequence of the expansion of the current definition of the South African public service as legislation is anticipated that will lead to a single public service. It is commonly understood that the current national, provincial and local spheres of government will be united under one banner. Such a change may change the social dialogue arena when the social dialogue role players from the local government sphere are incorporated with the current public service social dialogue role players

4. To analyse the strengths and weaknesses of the collective bargaining process within the South African public service.

5. Draw conclusions.

When these objectives are achieved the significance of the thesis is that it would make a modest contribution to the written or recorded body of knowledge that hardly exist on the topic. As such it would provide another reference point to public servants, students and laypersons that want to understand how the collective bargaining and social dialogue environment within South African public service currently functions. This would have an awareness raising function and contribute to more and better targeted policies or programmes for improving collective bargaining and social dialogue in South Africa's public sector.



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1.5. Research methodology and limitations

1.5.1. Qualitative methodology and case study

The qualitative methodology in the form of a case study is employed to systematically gather evidence related to the Public Service Co-ordinating Bargaining Council (PSCBC). The case study method provides for focused and detailed information on circumstances and context relevant to the investigation of the PSCBC to be gathered.

This report focuses on the PSCBC as prescribed in the scope of application contained in the constitution of the PSCBC⁴. It thus excludes definitions of public service not covered by the Public Service Act, 1994 and the PSCBC constitution. Although the local government sphere can be seen as being part of the public service the local government sphere

⁴ At the time of concluding this research report investigations of including the local sphere of government under the auspices of the PSCBC was underway. But until those investigations are concluded, the current scope of application of the PSCBC is referred to.

has its own social partners that meet at the South African Local Government Bargaining Council. The South African Local Government Association (SALGA) represents the local government employer, while the South African Municipal Workers Union (SAMWU) and the Independent Municipal and Allied Trade union (IMATU) are the trade parties that represent the employees at the local government sphere. The local government sphere is excluded from both the current definition of the public service as contained in the Public Service Act of 1994 and the scope of the PSCBC and therefore the local government sphere does not form part of this study.

I selected to utilise the qualitative methodologies because it allows for direct and indirect observation. Direct observation was obtained through personal attendance of PSCBC meetings during the period 1999 to 2003. During this period I was employed by the Provincial Administration of the Western Cape as a labour relations officer within the Directorate: Labour Relations within the Department of the Premier. As such job incumbent I represented the Western Cape Provincial Administration at PSCBC meeting on a regular basis.

Indirect observation was obtained through the study of documentary sources. The primary documentary sources included the annual reports of the PSCBC the Labour Relations Act, The Public Service Act, and various conference and seminar discussion papers. The International Labour Organisation's (ILO) comparative study of contents of civil service statutes provided for the comparative analysis of various international public sector experiences.

1.5.2. Research design

The qualitative methodology in the form of a case study allowed for first hand and personal knowledge not easily obtainable in research papers or

books. The semi-structured interviews and questionnaires were followed up by telephonic interviews.

The population includes all the members of the PSCBC relevant to the study identified above. The sample group identified for semi-structured interviews included only a selection of stakeholders or role-players directly involved in the collective bargaining process at the PSCBC. The sample group consists of the PSCBC secretary and representatives from both the employer and employee parties.

The semi-structured interviews were supplemented by a questionnaire (Annexure A). During March 2006 the questionnaire was distributed to the secretary of the PSCBC, the chief negotiator on behalf of the state as employer and the chief negotiators for each of the admitted trade unions to the PSCBC. The questionnaire was distributed via electronic mail to the PSCBC sample group.

The response rate to the questionnaire or the interviews was poor. The employer representatives, the secretariat and three of the eight recognised trade unions responded to the questionnaire.

The questionnaire contains questions that relate to the structure of the PSCBC, bargaining at sector level, the PSCBC membership threshold, and the PSCBC dispute resolution mechanisms.⁵ The questionnaire required the sample group to indicate their preference to the questions by indicating on a scale of 1 to 5 whether they strongly disagree; disagree; undecided; agree or strongly agree. The questionnaire contained eleven questions. The most important questions were the following:

“The membership threshold of 50 000 trade union members for admission of trade unions to the PSCBC promotes negotiation and collective bargaining in the public service.”

⁵ See Annexure A for a copy of the questionnaire.

“The 50 000 trade union membership should be increased.”

“Tasks teams established by the PSCBC and its structures promote a sound relationship between the State as employer and its employees.”

“The PSCBC allows trade unions to assert themselves and engage in constructive and meaningful bargaining.”

The secondary data was sourced from the annual year reports of the PSCBC. These were supplemented by various conference papers related to the topic of collective bargaining and social dialogue around the world, but specifically the South African public service. In addition to this, input was also sourced from material compiled by the International Labour Organisation (ILO) and other relevant websites.



1.5.3. Limitations of methodology and study

The case study of the Public Service Co-ordinating Bargaining Council (PSCBC) cannot easily be generalised because of the current definition of the public service. The definition of the public service is specific and determined by the Public Service Act of 1994, Schedule 1 sections 7(2) and (3). It excludes certain “state” organs that could commonly be viewed as part of the public service.

A possible consequence of the researcher’s direct involvement at the PSCBC as an employer representative, may lead to a bias in the presentation and the writing of this study. Financial and time constraints impacted on the writing of this research report as the seat of the PSCBC and most of the role-players are located in the Gauteng Province in South Africa. The author of this thesis is located in the Western Cape Province and had to make use of telephonic interviews and electronic mail as a mode of communication with role-players for the most part. Data collected for this thesis was obtained for the most part from the annual reports of the PSCBC and relevant websites. The author experienced that data relevant to the PSCBC is limited, and in most cases only obtainable from the PSCBC parties, specifically from the PSCBC secretary, which may indicate an over reliance on that particular source of information.

The PSCBC is a living organisation; it is continuing to develop, for this reason future research into the effectiveness of the PSCBC should be undertaken.

1.6. Outline of research report

The thesis is organised into six chapters. In Chapter 2 an investigation into the definition of the South African public service is conducted. It continues and defines collective bargaining and the various collective bargaining

forums in terms of the labour legislation as performed within the public service. Furthermore, the chapter provides a brief historical overview of social dialogue, also known as collective bargaining processes in the South African public service and the labour legislation that was applicable prior to the 1995 labour dispensation.

Chapter 3 offers the institutional arrangement of the PSCBC. The chapter provides a model (schematic framework) of collective bargaining in the public service. The chapter indicates the objectives that the PSCBC has set for itself. The PSCBC membership criteria are discussed and the voting power of the parties is explained. At the PSCBC the state as employer is represented by representatives from the Department of Public Service and Administration (DPSA), while the employee party to the PSCBC consists of the trade unions in the Council. Chapter 3 describes how the trade union parties have organised themselves into 'camps' and concludes with a discussion on the dispute resolution mechanisms created by the PSCBC parties for the South African public service.

Chapter 4 focuses on the labour relations challenges found within the South African public service. The chapter surveys the number of disputes of rights and disputes of interests recently managed by the PSCBC.

Chapter 5 analyses and comments on whether the PSCBC strengthens or contributes to social dialogue in the South African public service. The argument is raised that the PSCBC is a facilitating body, where a co-dependent relationship exists between all the PSCBC parties.

Chapter 6 is the concluding chapter. The chapter provides an overview of the study and concludes by indicating matters that could be considered for future study.

CHAPTER 2: OVERVIEW OF PUBLIC SECTOR COLLECTIVE BARGAINING

2.1. Introduction

This chapter provides an overview of the relevant literature, and the definitions of the relevant and most important concepts used in the theoretical framework. It also seeks to provide the reader with an overview and brief description of the South African public sector collective bargaining.

The chapter is organised in four parts. Firstly, the South African public service is defined. The definition of the public service in this chapter is very specific, in that the definition is captured in the Public Service Act of 1994, as amended. The scope of application of the Public Service Coordinating Bargaining Council (PSCBC) as contained in the PSCBC constitution complements the aforementioned Act, in so far as it indicates which public servants are affected by social dialogue interactions and outcomes concluded at the PSCBC. Both definitions by implication exclude certain sectors of the broader public service. Secondly, collective bargaining will be defined. The investigation explores collective bargaining in two ways. First, collective bargaining as understood by the International Labour Organisation (ILO) and secondly, as collective agreements (which is the end result of collective bargaining) in terms of the Labour Relations Act of 1995. Thirdly a brief historical overview of the collective bargaining processes and public sector legislative reforms in South Africa from the early-1990's to post-1994 is provided.

2.2. South African public service defined

Commonly the public service is understood to be any activity or service which government renders. Budeli (2003:51) defines the public service as

“any activity aimed at serving the public interest, whether carried out by private or public employees, it means a body of persons; i.e. public servants; specifically appointed to serve the public interest.” This definition is very broad. Such a definition includes all government activities.

2.2.1. National departments and provincial administrations

In South Africa there are three spheres of government the national, provincial and local spheres. Chapter III of the Public Service Act of 1994 defines the Public service as national departments and provincial administrations and organisational components.

Figure 1: National Departments

NATIONAL DEPARTMENTS	
1.	Department of Agriculture
2.	Department of Public Service and Administration
3.	Department of Arts and Culture
4.	Department of Communications
5.	Department of Correctional Services
6.	Department of Defence
7.	Department of Education
8.	Department of Environmental Affairs and Tourism
9.	Department of Foreign Affairs
10.	Department of Government Communications and Information System
11.	Department of Health
12.	Department of Home Affairs
13.	Department of Housing
14.	Department of Justice
15.	Department of Labour
16.	Department of Public Works
17.	Department of Safety and Security
18.	Department of Science and Technology
19.	Department of Social Development
20.	Department of Trade and Industry
21.	Department of Transport
22.	Department of Water Affairs and Forestry
23.	National Intelligence Agency
24.	National Treasury
25.	Office of the Public Service Commission
26.	South African Management and Development Institute
27.	South African Secret Service
28.	Sport and Recreation South Africa
29.	Statistics South Africa
30.	The Presidency
31.	Department of Minerals and Energy
32.	Department of Land Affairs
33.	Department of Provincial and Local Government
34.	Department of Public Enterprises

Source: Public Service Act of 1994, Schedule 1 section 7(2)

The Public Service Act definition excludes the local government sphere. The scope of application of the PSCBC is limited to the public service definition provided in the Public Service Act. The South African public service consists of national and provincial spheres of government. Figure 1 above provides a representation of the national departments: Currently the Republic of South Africa has nine provinces. Each province has national departments (also known as the national government sphere).⁶ In total the national government sphere is comprised of thirty-four national departments.

The provincial administrations (also known as the provincial government sphere) are reflected in Figure 2 below.

Figure 2: Provincial Administration

PROVINCIAL ADMINISTRATIONS
Provincial Administration: Eastern Cape
Provincial Administration: Free State
Provincial Administration: Gauteng
Provincial Administration: North West
Provincial Administration: Western Cape
Provincial Administration: KwaZulu-Natal
Provincial Administration: Mpumalanga
Provincial Administration: Northern Cape
Provincial Administration: Northern Province

Source: Public Service Act of 1994, Schedule 1 section 7(3)

The size of the provincial administrations may vary from province to province depending on its administrative needs. For example the Provincial Administration: Western Cape currently has twelve provincial departments. To a large extent the provincial administrations duplicated the national departments and created provincial departments with similar names in the provinces in aspects where the provinces have concurrent authority. For example, there is one national department of education, which is also established as a provincial competency in each of the nine

⁶ The definition of the South African public service was last updated in Public Service Act on 24/08/2005

provincial administrations. KwaZulu-Natal is the only provincial administration that has a Department of the Royal Household.

2.2.2. Size of public service labour force

Figures 1 and 2 above indicate the structural essence of the South African public service. Each of the national departments and provincial administrations are staffed. The Minister of Public Service and Administration determines conditions of service for all these public servants. These service conditions are negotiated at the Public Service Coordinating Bargaining Council (PSCBC). The public service is South African's largest single employer, which accounts for about 20 percent of all formal employment and about 10 percent of the entire labour force (Huluman 2003:7). Statistics released by the Department of Public Service and Administration (DPSA 2003: 62) indicates that at the "*end of December 1997, the Public Service was employing 1,138,549 full-time staff.*" This makes the South African public service the largest single employer in the country. (Huluman 2003:7) indicates that "*between 20 September 1996 and 31 December 1997, the number of persons employed in the Public Service had decreased by 3.23 per cent.*"

2.2.3. Public service trade union membership

The right of employees to belong to a trade union is extended to the South African public service. Budeli (2003:49) states "*...the South African public service supports the constitutional right to freedom of association for public service employees...*" According to the DPSA (2003:62) between 40 and 60 per cent of public servants are members of trade unions and staff associations. A large number of public servants belong to more than one trade union. The DPSA (2003:62) states that the dual or multiple trade unionisms of public servants "*blurs the picture regarding the exact level of unionisation or organization in the Public Service*".

2.2.4. National Departments excluded from the definition of the public service for collective bargaining purposes

When it comes to collective bargaining in the South African public service, the definition of the South African public service is not all-inclusive. For the purpose of collective bargaining the Public Service Coordinating Bargaining Council (PSCBC) excludes certain national 'public service departments' from its scope of application in its constitution. This power of exclusion exercised by the PSCBC is obtained from the Labour Relations Act (LRA) of 1995⁷ which defines the public service as the public service referred to in the Public Service Act of 1994⁸ (as indicated in figures 1 and 2 above). This definition excludes:

- (a) the members of the National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service.

Public service national departments such as the South African National Defence Force (SANDF), the National Intelligence Agency (NIA), and the South African Secret Service (SASS) are thus excluded by the definition provided for by the 1995 LRA for the purpose of collective bargaining within the PSCBC. Also excluded from the definition of public service and from the scope of application of the PSCBC are state agencies or parastatals.

The Constitution of South Africa guarantees freedom of association. Budeli (2003: 55) explains that "*the impact of this was that trade unionism was allowed within the SANDF*" Thus, employees working for the SANDF, NIA and SASS enjoy the freedom to belong to trade unions, but are excluded by the definition contained in the Public Service Act, the LRA,

⁷ LRA of 1995, section 213

⁸ Section 1(l) of the Public Service Act, 1994 (promulgated by Proclamation No.103 of 1994, and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act,

and the constitution of the Public Service Coordinating Bargaining Council (PSCBC) from the collective bargaining forum where the rest of the public servants are represented to collectively bargain, namely the PSCBC.

Heinecken (1997) indicates that there is *“still a need for a mechanism whereby uniformed personnel⁹ can negotiate or lobby for their unique service requirements.”* The military and the ‘spies and spooks’ per se are not represented at the PSCBC. However, the pay and conditions of service negotiated at the PSCBC is extended to military personnel. According to Heinecken (1997) this arrangement *“effectively removes a potential area of conflict from the military arena”*. She argues, *“...an alternative mechanism through which the interests of the military could be accommodated, outside the bargaining structures that are in place for the rest of the public service, is required.”* This type of exclusions from the collective bargaining arena within the public service is not unique to South Africa. Fashoyin (2007:3) indicates that *“Southern African countries such as Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe all have the legal framework that prescribes the institutional arrangement for social dialogue.”*

2.2.5. Local sphere of government excluded from the definition of the public service for collective bargaining purposes

In general terms the local government sphere is seen as *“any activity aimed at serving the public interest”*, and could be considered to be included as part of the national and provincial spheres. However, for the purposes of collective bargaining, the local government sphere has its own collective bargaining mechanisms that meet at the South African Local Government Bargaining Council. At this sphere of government, the South African Local Government Association (SALGA) represents the employer, while the South African Municipal Workers Union (SAMWU) and the

⁹ Assuming that the SANDF, SASS and NIA are all deemed to be uniformed personnel.

Independent Municipal and Allied Trade union (IMATU) are the trade parties.

2.3. Collective bargaining defined

Writers on the subject of collective bargaining use the terms 'collective bargaining', 'negotiations' and 'social dialogue' interchangeably. Internationally, the International Labour Organisation (ILO) is deemed to be the custodian of workers rights, and it sets a definition for collective bargaining. For our own local model, the LRA defines collective bargaining in its particular way.

2.3.1. Collective bargaining, ILO definition

The United Nations (UN) founded the International Labour Organisation (ILO) in 1919. According to the mandate of the International Labour Organisation (ILO) it *“formulates international labour standards...setting minimum standards of basic labour rights, freedom of association, and the right to organise...”*

South Africa ratifies the conventions and recommendations of the International Labour Organisation (ILO). The International Labour Organisation (ILO 1949) describes collective bargaining as:

“Voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by collective agreements.”

Hodges Aeberhard (2005:46) indicates that researcher's such as Neal, Ozaki and Treu *“analysed the trends in the industrial relations and negotiation procedures areas over the last two decades and found that the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154) of the ILO shows a positive trend towards social dialogue in the public service internationally.”*

De Silva (1996) explains collective bargaining negotiations relating to “*terms of employment and conditions of work between an employer and a group of employers or an employers’ organisation on the one hand, and representative workers’ organisations on the other, with a view to reaching agreement.*” While Spoelstra (2006:3), a South African writer, argues that “*negotiations is a process of interaction between parties directed at reaching some form of agreement that will hold and which is based on common interest, with the purpose of resolving conflict, despite widely dividing differences.*” These writers point out that there are conflicting parties that are setting out to reach common understanding or agreement/s through collective bargaining or negotiations. In the South African public service domain these conflicting parties are the state, as employer, and the recognised trade unions. The only variance detected between how the International Labour Organisation (ILO) defines collective bargaining and how the processes that brought about the Public Service Coordinating Bargaining Council (PSCBC) is that the PSCBC was legislated into place by means of section 35 of the South African Labour Relations Act (LRA). It appears that this interaction is voluntary by nature. And that the PSCBC interaction takes place with the purpose of resolving conflict, despite widely dividing differences between the state as employer and its recognised trade unions.

2.3.2. The LRA and collective bargaining

The Labour Relations Act (LRA) of 1995 promotes centralised collective bargaining in three ways, namely collective agreements, bargaining councils and statutory councils.

Collective agreements in terms of the LRA are established in terms of Section 23 of the Act. Section 31 of the LRA deals with the “binding nature” of a collective agreement concluded in the bargaining council. This section gives legal effect to collective agreements. Once a collective agreement is reached, it becomes binding on the affected parties. Such a

collective agreement binds the parties to the collective agreement. The South African LRA is applicable to both the private and public sector and for this purpose the LRA was written in broad terms. In the private sector not all employers and trade unions are necessarily part of bargaining forms or bargaining councils. In the South African public service the South African National Defence Force (SANDF), the National Intelligence Agency (NIA), and the South African Secret Service (SASS) are excluded from the collective bargaining process conducted at the PSCBC. The LRA has a unique way of overcoming these exclusions. The LRA uses 'broad strokes' to create inclusive terms. Section 32 of the Labour Relations Act (LRA) deals with instances where a bargaining council wishes to extend its collective agreement to non-parties falling within its jurisdiction but not bound by the agreement. The LRA states that collective agreements bind *"each party to the collective agreement"*, that is those who negotiated the agreement and their members, *"and the members of every other party"*, that is those who fall outside of a collective bargaining forum, but forms part of the same economic sector, *"to the collective agreement, in so far as the provisions are applicable between them."*

Bargaining Councils in terms of the LRA are established in terms of Section 27 of the Act. This section states that one or more registered trade union and one or more registered employers' organisation may establish a bargaining council for a sector and area by adopting a constitution that meets the requirements of the LRA and obtaining registration of the bargaining council in terms of the LRA.

Statutory Councils in terms of the LRA is established in terms of Section 39 of the Act. This section describes a statutory council as a body consisting of a representative trade union/s and representative employers' organisation/s whose membership constitute at least 30 per cent of the employees respectively and are registered in terms of the requirements of the LRA.

The generalist approach of the LRA in regulating the employee and employer relationship is borne out of the industrial relations history of South Africa. The South African public service was directly affected by the lack of democratic industrial relations developments of the past. Hence, a brief historical overview of the South African public service collective bargaining is provided.

2.4. Historical overview

The achievement of collective bargaining in the South African public service cannot be seen in isolation from the broader democratisation of the South African society. Prior to the 1995 Labour Relations Act (LRA) collective bargaining, as it is currently performed, in the South African public service was 'an animal unheard of'. According to Molahlehi (2005:3) "*public service employees prior to 1993 had no labour rights, no right to join unions and no right to bargain.*" Ngcukaitobi (2005:3) indicates that

"...the South African public service employees were specifically excluded from the 1956 Labour Relations Act. Then in the late 1980's into the 1990's there was a surge in the Public Service in terms of industrial action. More workers began to join the ranks of trade unions and the level of industrial action was on the increase. The Police, Prisons and Civil Rights Union (POPCRU) formed in 1989, embarked on nationwide protest action to demand recognition and bargaining rights. This coincided with the move within the political arena to displace the Apartheid regime."

Adler (2000:2) is of the view that

"...the budding unions in the public service were from the outset highly politicised, in the first instance they were the only formations in the labour movement that faced the apartheid state both as oppressor and as employer."

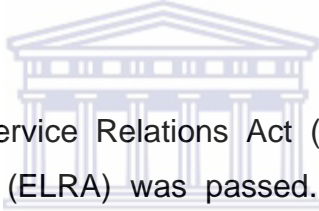
While Ngcukaitobi (2005:5-7) states that

"...in line with the sweeping political changes of the late 1980's and early 1990's, the power and militancy of trade unions including those organizing in the public sector grew significantly. The impact of these developments was the extension of labour rights to public service employees."

The state and its trade unions will bring conflicting interest to the bargaining table at the Public Service Coordinating Bargaining Council (PSCBC). Much of this conflict is historical, not only due to the historical political meddling, but also due to the relationship that exists in any employer-employees' relationship. This relationship was even more hampered in the public service because of the rigid 'old guard' that restricted public service collective bargaining in South Africa.

2.4.1. Changing the 'old guard'

The period leading up to the 1994 democratic ballot vote was accompanied by multiple changes in the South African legislation. Some of the sweeping legislative transformation affected the public service as well.



In 1993 the Public Service Relations Act (PSRLA) and the Education Labour Relations Act (ELRA) was passed. This opened the doors to Public Service workers to enjoy certain basic rights. The South African Police Labour Relations Regulations in terms of the Police Act was promulgated. These regulations extended labour rights to members of the then police force. The regulations provided new procedures governing the discipline and dismissal of members of the police services.

The bargaining structures created by these three statutes performed similar functions. These were essentially to prevent disputes arising; to endeavour to settle disputes that have arisen or may arise; and take such steps deemed expedient to bring about the regulation of settlement of matters of mutual interest.

Through these statutes collective bargaining forums were established for collective bargaining in the public sector. The system of collective bargaining prior to the establishment of the PSCBC was confusing with various pieces of legalisation that attempted to cover as much of the

public service as it could. The established bargaining forums included the Public Service Bargaining Council (PSBC), Education Labour Relations Council (ELRC) and the National Negotiating Forum and Provincial Negotiating Forums.

2.4.2. Public Service Bargaining Council (PSBC)

Ngcukaitobi (2005:5-7) explains that

“...the PSLRA applied to all employees working in Government departments and provincial administrations as well as those organisational components of the State. The PSLRA established a Public Service Bargaining Council (PSBC) consisting of bargaining chambers at central level, a chamber for each department at departmental level and a chamber for each provincial administration. Participation in the PSBC depended on registration whereas recognition and admission in general rested on the union demonstrating that it was sufficiently representative of the employees whose interests were dealt with in the Chamber...”

2.4.3. Education Labour Relations Council (ELRC)

Ngcukaitobi (2005:5-7) indicates that

“...the ELRA established the Education Labour Relations Council (ELRC). The ELRA applied to employers, employees, and employers’ organizations, employee organisations and to the Education Labour Relations Council (ELRC) established in terms of the ELRA. Employees under the ELRA included teachers at schools and colleges but excluded university academics and public servants. Similarly participation in the ELRC vested on admission to the ELRC in terms of the ELRA, this was dependant on registration and the party being sufficiently representative of the employer or employees within a particular region. In addition, an employer’s organisation could only negotiate in the ELRC on a particular matter if it proved that it was empowered to negotiate, and an employee’s organisation could negotiate on a matter if it proved it sufficiently represented employees affected by the matter...”

2.4.4. National Negotiating Forum and Provincial Negotiating Forums

According to Ngcukaitobi (2005:5-7)

“...the Police Regulations established the National Negotiating Forum and Provincial Negotiating Forums, which functioned as bargaining chambers. Participation in the national and provincial forums in the Police Services was open to recognized employee organisations provided that such organisation could only negotiate on a particular matter if it proved that it represented employees affected by the matter. In order to gain recognition, a union in the Police Services had to apply for registration through the National Police Commissioner, notwithstanding the fact that such organization might have been registered in terms of any other law, such as the LRA. The National Commissioner was obliged to register an employee’s organisation if it complied with certain formalities, it was not affiliated to any political party, or did not receive material support from any political party, and it was sufficiently representative of the employees of the South African Police Service.”

Prior to 1994 there was a confusing system of collective bargaining. Not only was collective bargaining complex, various bargaining components were utilized to perform collective bargaining throughout the public service, these bargaining components did not speak to one another as they operated individually. One becomes doubtful whether those interactions could be called collective bargaining as organized labour, in the cases where they were recognized, could only make recommendations. The change in the political system, the demise of the apartheid government in 1994 and the birth of a new democratic era resulted in fundamental legislative changes.

2.4.5. Creation and establishment of the new collective bargaining order

The democratic South African government ratified a number of International Labour Organisation (ILO) Conventions and Recommendations. South Africa affirmed its commitment to be bound by ILO Conventions and Recommendations.

In 1996 the interim constitution of South Africa was introduced. This led the way for the Public Service Act of 1994 to be introduced, thereby, repealing the 1993 Public Service Relations Act (PSRLA).

The Public Service Act of 1994 granted employees in the public service the freedom to join trade unions, the right to participate in collective bargaining and protection against unfair labour practices. In addition, employees employed by the state were granted the right to strike subject to adherence of the prescriptions in the 1995 Labour Relations Act (LRA).

For the first time in South African history these statutes made provision for labour relations to be extended to the public service employment relationship. Albeit that it was done by way of statute, recognizing the importance of collective bargaining and the application of fairness as a criterion when resolving disputes. The advent of democracy on 27 April 1994 had a substantial impact on public service collective bargaining in South Africa. The subsequent promulgation of the Labour Relations Act, 66 of 1995 (LRA) changed the face of labour legislation and in particular the face of collective bargaining in South Africa.

Since then the public service employees and employees in general in South Africa, by means of Section 23 of Act 108 of 1996 had been guaranteed Labour Relations rights.¹⁰ The purpose of the Labour Relations Act (LRA) provisions was primarily to give effect to the constitutional right to fair labour practices as enshrined in section 27 of the interim constitution, which was in force at the time. Section 27 of the interim constitution was subsequently replaced by section 23 of the Constitution, Act 108 of 1996. Section 23 of the Constitution largely retained the salient provisions of section 27 of the interim constitution.

The South African public service is in transition. Apartheid created disparities, and left behind negative legacies for the public service collective bargaining arena. Parsons (2001:159-160) shares his National

¹⁰ Act 108 of 1996 is the South African Constitution.

Economic, Development Labour Council NEDLAC¹¹ experiences by indicating, *“given the bitter legacy of apartheid it becomes too optimistic to expect that levels of trust would be established overnight.”* Budeli (2003: 58-59) refers to the South African Labour Court acknowledging *“unions and employers were natural adversaries, but they were obliged to live together and to co-operate increasingly as commerce and industry become more complex.”* Both views are plausible; trust is needed for any agreement to be sustainable between parties. All being equal, and assuming that trust is established and maintained, the question that comes to mind is whether the social dialogue interactions at the PSCBC leads to:

- Improved public service delivery,
- contribute to participative management within the public service,
- stability in the employer-employee relationship, as far as preventing industrial action is concerned,
- continued consensus being reached, building trustful relationships in the process.

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It is commonly understood that the public service of South Africa emerged, and is currently in transition, from a culture where participative management was ‘taboo’. Public institutions were used as tools of oppression. Public service trade unions were not recognised. In most cases the practice of management speaking to their employees was non-existent. Parsons (2001:142) is of the view that

“...the system of apartheid fractured South African society horizontally and vertically. It left a widespread legacy of mistrust and suspicion. The sense of give and take, of compromise, of consensus seeking, all these needed to be rediscovered in the post apartheid era...”

¹¹ NEDLAC is commonly perceived as the apex where social dialogue is successfully practised within South Africa.

2.5. Summary

In the Republic of South Africa there are three spheres of government, namely the national, provincial and local government spheres. In total there are thirty-five national departments and nine provincial administrations. Chapter III of the Public Service Act of 1994 defines the Public service as national departments and provincial administrations. Thereby the local government sphere is excluded from the commonly understood definition of the public service. This exclusion from the public service is extended to the South African National Defence Force (SANDF), the National Intelligence Agency (NIA), and the South African Secret Service (SASS).

The public service is South African's largest single employer, which accounts for about 20 percent of all formal employment and about 10 percent of the entire labour force. The Public Service Act of 1994 granted employees in the public service the freedom to join trade unions, the right to participate in collective bargaining and protection against unfair labour practices. As a direct result of this, more public servants are members of trade unions. Between 40 and 60 per cent of public servants are members of trade unions and staff associations. However, a large number of public servants belong to more than one trade union. The exact extent of trade unionism is clouded as dual or multiple trade membership and is detected amongst the public servants.

Collective bargaining is voluntary negotiation between employers and workers organisations. The system of collective bargaining prior to the establishment of the PSCBC was confusing with various pieces of legalisation that attempted to cover as much of the public service as it could. Subsequent to the political changes of the late 1980's and early 1990's labour rights was extended to public servants. One such right was to engage the state as employer over the service conditions of public

servants. The 1995 Labour Relations Act promotes centralised collective bargaining.



CHAPTER 3: THE PSCBC OBJECTIVES AND STRUCTURE

3.1. Introduction

In South Africa the state as employer and its organised trade unions needs to speak to one another. Historically and by nature the bond between these parties are adversarial because of the different interest the parties bring to the relationship. A third party needs to intervene to facilitate the conditions for building a healthy bond between the two social partners. Fashoyin (2007:9) indicates, *“the legitimacy and relevance of social dialogue concern the will of the social partners to engage in dialogue and the assurance that dialogue involves the right constituent-stakeholders.”* In the South African public service legislation such as the 1995 Labour Relations Act, a third party was created. It is known as the Public Service Co-ordinating Bargaining Council (PSCBC).

This chapter is organised into three sections. The first section provides an outline of the PSCBC objectives, the second section offers a description of the collective bargaining structure in the public service and the third section examine the parties involved in the PSCBC.

3.2. Establishment and objectives of the PSCBC

This section reflects the establishment and objectives of the PSCBC. Prior to 1997, when the PSCBC was established, labour relations in the South African public service of was limited. Adler, (2000:6-7), states that

“...for most of the twentieth century the public service was one of the most inhospitable sectors for worker organisations in South Africa. The public service was as a whole excluded from the ambit of the Labour Relations Act, a condition that undermined collective action by all public servants. The very notion of ‘labour relations’ scarcely applied. No public servant enjoyed the right to join a registered trade union and bargain collectively with the employer.”

The legislative framework since 1994 dramatically changed the bleak picture painted by Adler about public service labour relations. However, the changes did not happen automatically. The transformation of the South African public service had to be steered a by a political will, driven by the state. The South African legislative body was prepared to forego complete dominance of public service labour relations and engaged its social partners in collective bargaining. The state's willingness to promote collective bargaining aided the establishment of current centralised bargaining structure. As Fashoyin (2007:9) points out

"...most often than not, it is the government that is portrayed as lacking the will to engage in dialogue, and rightly so because in principle, when government engages in dialogue over issues of public policy, it is in effect sharing its decision-making authority with those with whom it is dialoguing."

In 1995 the Labour Relations Act (LRA) was promulgated and for the first time and made a bargaining council in the public service compulsory. The 1995 LRA states in section 35 that there will be a bargaining council for the public service, as a whole, to be known as the Public Service Co-ordinating Bargaining Council (PSCBC). Huluman (2003:6) indicates that

"unlike the private sector bargaining councils, which are formed through a voluntary process, the Labour Relations Act established the Public Service Co-ordinating Bargaining Council (PSCBC) as a mandatory bargaining council for the public service."

The South African public service moved from restricted labour relations to compulsory, institutionalised collective bargaining with considerable assistance of the state. In this instance the state is also the employer and a party to the PSCBC. Once established, the PSCBC had set itself objectives in managing the relationship between the state and its recognised trade unions.

The achievement of the objectives may indicate the effectiveness of the PSCBC. The constitution of the PSCBC (PSCBC 2003:3) set the following objectives, to:

- a) Generally enhance labour peace in the public service / promote a sound relationship between the State as employer and its employees. Promote a sound relationship between the State as employer and its employees;
- b) Negotiate and bargain collectively to reach agreement on matters of mutual interest to the employer and employees represented by admitted trade unions in the Council;
- c) Provide mechanisms for the resolution of disputes between the employer and (employees as well as) trade unions admitted to the Council, and to perform dispute resolution functions between the employer and employees within the registered scope of the Council, where the employer has the requisite authority to resolve such disputes;
- d) Conclude, supervise and enforce collective agreements;
- e) Comply with its duties and functions in terms of the Labour Relations Act and its constitution;
- f) And consider and deal with such other matters as may affect the interests of the parties to the Council.

The underlining theme running throughout the above objectives is to enhance constructive social dialogue between the parties involved in the Public Service Co-ordinating Bargaining Council (PSCBC). This necessitates an outline and discussion about how the structure gives expression to facilitate the work to achieve the objectives.

3.3. Structure and membership to the PSCBC

The structure of the PSCBC is shaped by the objectives and functions of the organisation. Since the objectives outlined above this section focuses on the functions, organisational structure and membership.

3.3.1. Organizational structure of the PSCBC

In 1997 the Public Service Co-ordinating Bargaining Council (PSCBC) was established to determine the salaries and conditions of service in the South African public service. The main function of the PSCBC is to “deal

*with all matters that are regulated by uniform rules, norms and standards that apply to two or more sectors across the public service*¹². The Public Service Co-ordinating Bargaining Council (PSCBC) have been demarcated with four sectors in the Public Service, namely that of the Educators, Police, Health and General Public Service. The bargaining councils in these sectors negotiate on matters that pertain to each of these sectors specifically.

There is currently one central council (the PSCBC) and four sectors at which the state as an employer bargains with the labour representatives/trade unions. These four sectors are known as sectoral bargaining councils. They are the Safety and Security Sectoral Bargaining Council (SSSBC), the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC), the Education Labour Relations Council (ELRC), and the General Public Service Sectoral Bargaining Council (GPSSBC). These four sectoral councils have its own individual role players that are employer representatives and trade union representatives. However, the PSCBC remains the apex and trade unions active at the sectoral councils must have representation at the PSCBC first. Any collective agreement concluded in the sectoral councils must be ratified by the PSCBC. These sectoral councils facilitate the attainment of the PSCBC objectives.

The Department of Public Service and Administration (DPSA 2003: 63) admits to the complexity of the South African collective bargaining structure by stating that

“...the collective bargaining situation is further compounded by the existence of a complex legal framework... with laws that have overlapping powers around the public service... The educators and their auxiliary staff dichotomy is one such example. The educators fall under one piece of legislation (the Educators Act), whilst their support staffs falls under another (the Public Service Act). The effect is that benefits and conditions of service for these employees are bargained in two

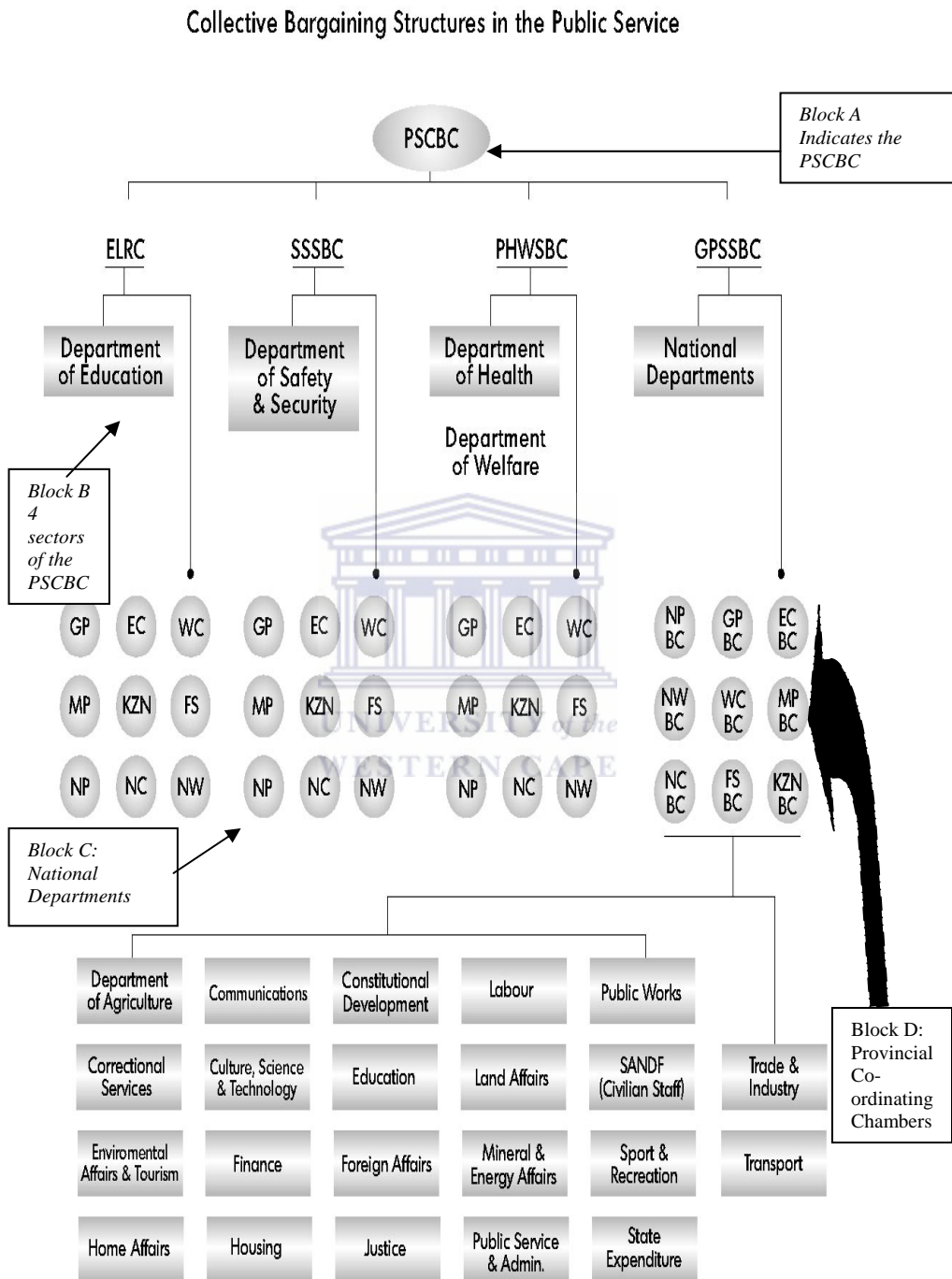
¹² Constitution of the PSCBC 2003

different councils (the ELRC and the GPSSBC) and yet they have one employer.”

Huluman (2003:14) provides a schematic representation, in Figure 3 below, of the collective bargaining structure in the public service. Figure 3 indicates that at the apex of the collective bargaining structure is the Public Service Co-ordinating Bargaining Council (PSCBC). Here issues of mutual interest or transverse matters (for example public servant’s salaries), as they are often called, are bargained (Block A).

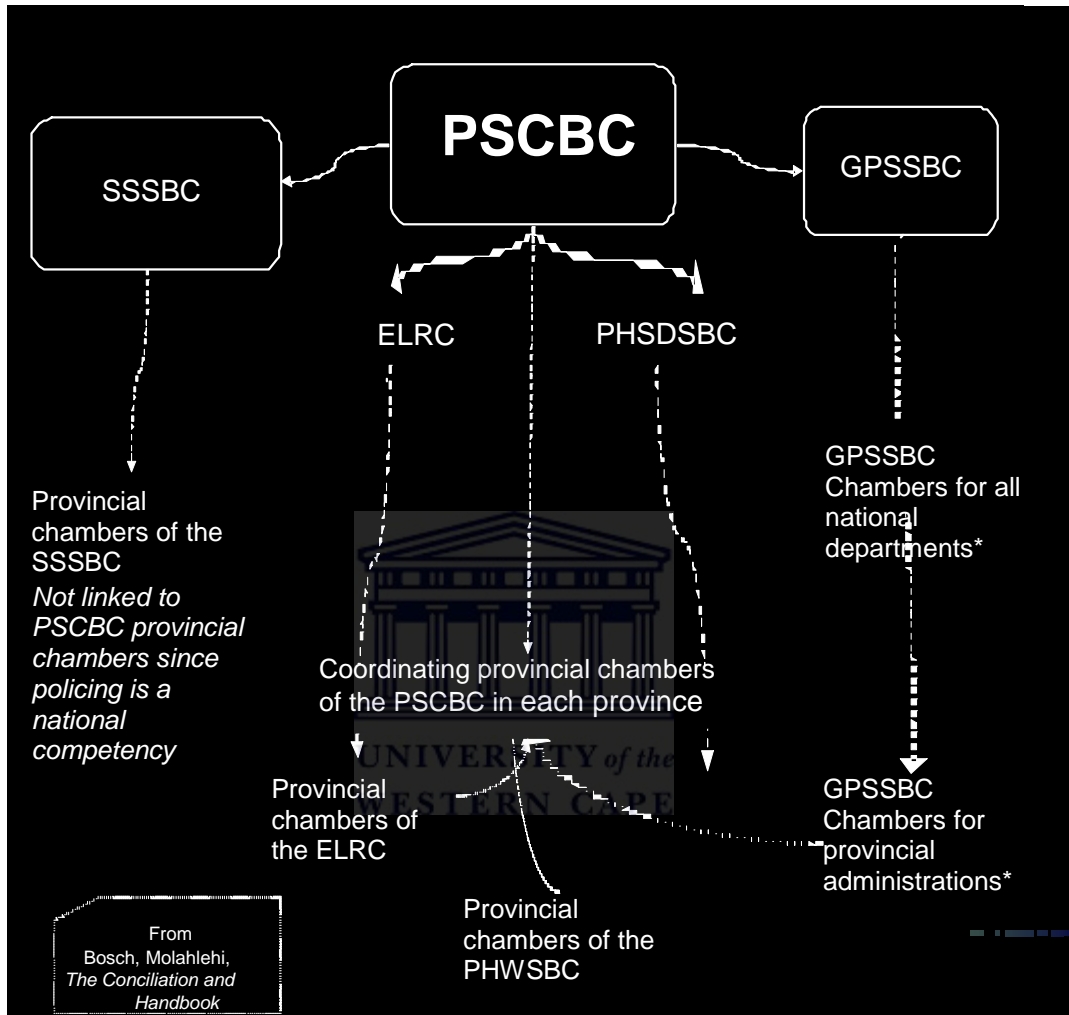


Figure 3: Collective bargaining structure in the public service



Source: Huluman (2003:14)

Figure 4: More recent representation of the collective bargaining structure in the public service



Source: Adopted from Huluman (2005:13)

The constitution of the Public Service Co-ordinating Bargaining Council (PSCBC) indicates that the PSCBC “sets out framework standards and norms for the public service as a whole to ensure uniformity.” Also encompassed in the collective bargaining structure are the four sector councils (Block B). The sector councils incorporate:

The police, known as the Safety and Security Sectoral Bargaining Council (SSSBC), which jurisdiction is augmented to include both the employees

of South African Police Services and the Department of Correctional Services employees. The PSCBC Annual Report (2006/7: 51) indicates that the following Public Service Co-ordinating Bargaining Council (PSCBC) admitted trade unions have members in this sectoral council: the National Union of Public Servants and Allied Workers (NUPSAW), the Police and Prison Civil Rights Union (POPCRU), the Public Servants Association (PSA), and the South African Police Union (SAPU).

The health and welfare employees, known as the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC), which jurisdiction is augmented to cover only those employees who are employed in the Health and Welfare sector (Other professionals employed by various sectors shall be catered for in those sectors). The PSCBC Annual Report (2006/7: 51) indicates that the following Public Service Co-ordinating Bargaining Council (PSCBC) admitted trade unions have members in this sectoral council: the Democratic Nursing Organisation of South Africa (DENOSA), the South African Medical Association (SAMA), the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA), the National Union of Public Servants and Allied Workers (NUPSAW), the Public Servants Association (PSA), the National Education Health and Allied Workers Union (NEHAWU), the Public and Allied Workers Union of South Africa (PAWUSA), the South African State and Allied Workers Union (SASAWU), the South African Democratic Nurses Union (SADNU), and the Natal Public Sector Workers Union (NPSWU).

Education Labour Relations Council (ELRC) covers the educators; its jurisdiction is augmented to include educators employed under the auspices of the Educators Act. The PSCBC Annual Report (2006/7: 51) indicates that the following PSCBC admitted trade unions have members in this sectoral council: the National Teachers' Union (NATU), the National Professional Teachers Organization of South Africa (NAPTOSA), the South African Democratic Teachers Union (SADTU), the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA), the

National Union of Public Servants and Allied Workers (NUPSAW), the Public Servants Association (PSA), and the Public and Allied Workers Union of South Africa (PAWUSA).

The core general public service and administration employees fall within the General Public Service Sectoral Bargaining Council (GPSSBC). The PSCBC Annual Report (2006/7: 51) indicates that the following Public Service Co-ordinating Bargaining Council (PSCBC) admitted trade unions have members in this sectoral council: the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA), the National Union of Public Servants and Allied Workers (NUPSAW), the Public Servants Association (PSA), and the Public and Allied Workers Union of South Africa (PAWUSA), the National Teachers' Union (NATU), the National Education Health and Allied Workers Union (NEHAWU), the Police and Prison Civil Rights Union (POPCRU), the United National Public Service Association of South Africa (UNIPSA), the National Public Service Workers Union (NPSWU), the South Africa State and Allied Workers Union (SASAWU), and the South African Union of Vocational Educators (SAUVE).

Also indicated in Figure 3 above is the state as employer, which are reflected as the national departments (Block C), and provincial administrations at the Public Service Co-ordinating Bargaining Council (PSCBC). The Provincial Co-ordinating Chambers (Block D) are within the nine South African provinces where the provincial administrations perform collective bargaining at a provincial level.

Figure 3 and Figure 4 above reflects the same organisational structure. Between 2003 and 2005 no changes transpired in the collective bargaining structure of the Public Service Co-ordinating Bargaining Council (PSCBC) and in the public service.

3.3.2. PSCBC criteria for membership, negotiating and voting

The state as employer and the recognised and admitted trade unions are the principal members at the Public Service Co-ordinating Bargaining Council (PSCBC). The PSCBC constitution sets the admission criteria for organised labour to be admitted to the PSCBC as well as the sectoral councils. As admission criteria (PSCBC 2003:5) a trade union must be a registered trade union in accordance with the provisions of the Labour Relations Act and the constitution of the Public Service Co-ordinating Bargaining Council (PSCBC). In 1997 the original admission threshold for trade unions was 20 000 members employed within the South African public service. These trade union members had to fall within the registered scope of the PSCBC and had to be members in good standing. The amended PSCBC constitution, registered on 31 March 2003, set a new threshold of 50 000 trade union members, which is 5 percent of the public service employees. Membership figures of each trade union are submitted to the PSCBC annually. The PSCBC annually reviews trade union membership.

Not all PSCBC trade unions have 50 000 members and have strategically created working together arrangements between individual trade unions. These working together arrangements are commonly entered into to secure a seat for a trade union at the PSCBC and in certain cases retain membership to the PSCBC. If for example a trade union such as the South African Medical Association (SAMA), which represents medical physicians, were to end their working together arrangement with DENOSA, SAMA will forfeit its seat at the PSCBC, because that individual trade union has less than 50 000 members.

The PSCBC secretary is appointed on a part-time or permanent basis. The PSCBC has appointed a permanent secretariat, which aids consistency in the administrative management of the PSCBC

Delegates from the Department of Public Service and Administration (DPSA) represent the employer party, supported by representatives from National Departments and the nine Provincial Administrations. However, the Minister for Public Service and Administration appoints the employer spokesperson for the PSCBC. The state, as employer is represented by (but not limited to) representatives from the Department of Public Service and Administration (DPSA). The DPSA representatives are supported by representatives from the national departments and the nine provincial administrations, as well as employer representatives from the four sectoral councils.

The employee parties are represented by appointments made from the ranks of the various trade unions recognised and admitted to the Public Service Co-ordinating Bargaining Council (PSCBC). Each trade union makes these appointments in accordance with their own trade union constitutions or rules. However, the numbers of trade union representatives which are entitled to represent their constituency are limited in the PSCBC constitution to the ratio of 3: 50 000 representatives per trade union members and a further ratio of 1: 30 000 additional trade union members or part thereof, but not more than five trade union representatives sit around the collective bargaining table at the PSCBC. Once the PSCBC admitted trade union representatives are appointed, they form a labour caucus. This labour caucus appoints a main spokesperson on behalf of the trade unions, with the understanding that each individual admitted trade union still retains its respective voice. Each admitted trade union could appoint its own chief negotiator on behalf of the individual trade union party. Huluman (2005:7) indicates, “...*the total delegation of the employer representation in Council is thirty five*”.

In total there are seventeen individually registered trade unions at the PSCBC. However, only eight trade unions are recognised and admitted in terms of the PSCBC constitution. Figure 5 below indicates the main trade

union and the trade unions with which the main trade union has working agreement(s).

Figure 5: Trade union at the PSCBC

Main Trade Union	Acting (working) together with main trade union
DENOSA	SAMA
HOSPERSA	NUPSAW and NATU
NAPTOSA	APEK, CTPA, NUE, OFSATA, PEU, SAOU, SAUVSE and USAPE
NEHAWU	PAWUSA
POPCRU	SASAWU and SADNU
PSA	UNIPSA and NPSWU
SADTU	No working together agreement
SAPU	No working together agreement

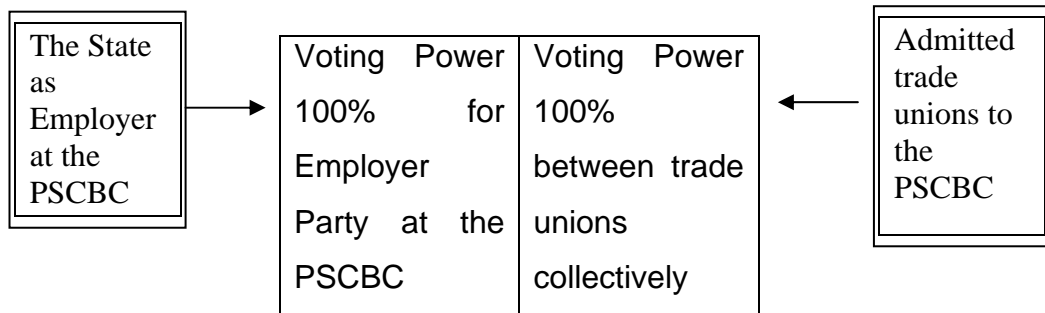
Source: PSCBC annual report 2006/7

The main trade unions indicated in Figure 5 are the trade unions with the majority membership. The trade union/s acting together with the main trade union would not meet the 50 000 membership threshold of the Public Service Co-ordinating Bargaining Council (PSCBC).

The voting power of trade unions admitted to the PSCBC is determined on the basis of the number of members in good standing of a trade union admitted to the PSCBC. The annual review of the trade union membership aids the determination of the individual voting power that each trade union has around the negotiation table.

At the PSCBC, the state enjoys one hundred percent of the voting power on its side of the negotiations table, while the recognised and admitted trade unions collectively share their one hundred percent voting power proportionately. Figure 6 below indicates how the voting power at the PSCBC negotiations table is divided amongst the principal members.

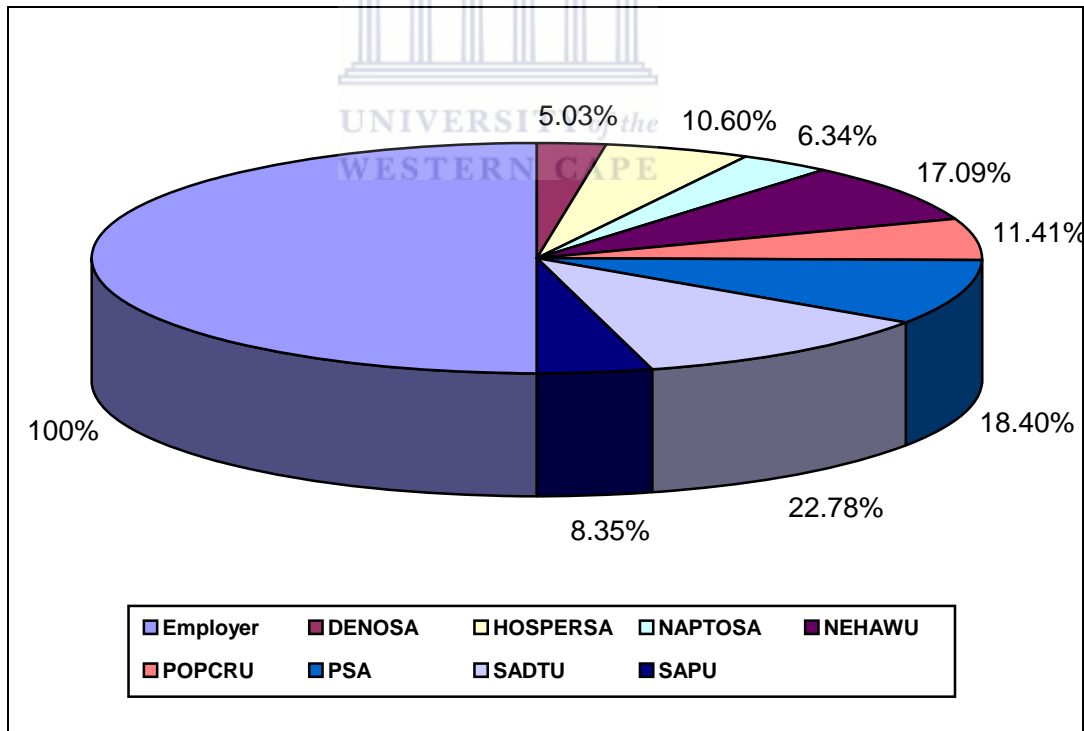
Figure 6: PSCBC negotiation table



Source: Constitution of the PSCBC 2003

The balance of power between the employer and the trade unions is not as straightforward as it seems. The voting power of the Public Service Coordinating Bargaining Council (PSCBC) parties is divided into percentages in Figure 7 below.

Figure 7: Voting percentages at the PSCBC, June 2007



Source: PSCBC annual report 2006/7

The voting power of the trade unions is allocated on a proportionate basis, depending on the number of members that the trade union has. The trade

union voting power may differ from year to year. The trade union membership and subsequent voting power are determined from June to the end of May the following year. The trade unions voting power, indicated in Figure 7 above, is of interest. They need to have 51% of organised labour's collective voting power agreeing with the 'stance' of the state as employer to reach a collective agreement. Figure 7 indicates that the employer has one vote, which counts for 100 % on the employer side. The trade union's votes are proportionately allocated and indicated in Figure 8 below, as follows:

Figure 8: Trade union votes for 2007

Trade Unions	Percentage votes
DENOSA	5.03%
HOSPERSA	10.60%
NAPTOSA	6.34%
NEHAWU	17.09%
POPCRU	11.41%
PSA	18.40%
SADTU	22.78%
SAPU	8.35%

Source: PSCBC annual report 2006/7

In a bid to unify their voting powers the trade unions have organised themselves into different 'camps'.

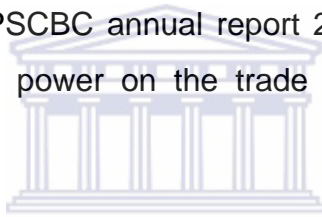
3.4. Organised labour at the PSCBC

Currently there are eight trade unions admitted to the Public Service Coordinating Bargaining Council (PSCBC). These eight trade unions have organized themselves into what is commonly known as 'camps'; namely the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa (FEDUSA), the Confederation of South African Workers Unions (CONSAWU), and an independent trade union, the South African Police Union (SAPU). These 'camps' perform a significant role

when a matter is determined through voting. Trade unions are registered as individual parties, but they pool their collective voting power either in support or in opposing a matter.

3.4.1. The Congress of South African Trade Unions (COSATU)

The largest trade union 'camp' is the Congress of South African Trade Unions (COSATU) 'camp'. The 'camp' consists of trade unions such as the Democratic Nursing Organisation of South Africa (DENOSA), the National Education Health and Allied Workers Union (NEHAWU), the Police and Prison Civil Rights Union (POPCRU), the South African State and Allied Workers Union (SASAWU), and the South African Democratic Teachers Union (SADTU). Collectively, according to the 2007 voting power percentages (PSCBC annual report 2006/7:54), this 'camp' holds 56.31% of the voting power on the trade union side of the collective bargaining table.



3.4.2. The Federation of Unions of South Africa (FEDUSA)

WESTERN CAPE

The second largest trade union 'camp' is the Federation of Unions of South Africa (FEDUSA) 'camp'. The 'camp' consists of trade unions such as the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA), the Public and Allied Workers Union of South Africa (PAWUSA), the Public Servants Association (PSA), and Suid Afrikaanse Onderwysers Unie (SAOU). Collectively, according to the 2007 voting power percentages (PSCBC annual report 2006/7: 54), this 'camp' holds 29% of the voting power on the trade union side of the collective bargaining table.

3.4.3. Confederation of South African Workers Unions (CONSAWU)

Huluman (2005:9) indicates, "...in 2005 a new federation, the Confederation of South African Workers Unions (CONSAWU) was formed". The 'camp' consists of trade unions such as the National Union

of Public Servants and Allied Workers (NUPSAW) and the National Professional Teachers Organization of South Africa (NAPTOSA), and is the third largest 'camp' at the Public Service Co-ordinating Bargaining Council (PSCBC). Collectively, according to the 2007 voting power percentages (PSCBC annual report 2006/7), this 'camp' holds 6.34% of the voting power on the trade union side of the collective bargaining table. Previously these two trade unions were regarded as independent trade unions.

3.4.4. *The independent trade union*

The smallest trade union group in the PSCBC is an independent trade union, the South African Police Union (SAPU), it holds 8.35% (PSCBC annual report 2006/7:54) of the voting power on the trade union side of the collective bargaining table and are not affiliated to any specific 'camp'.

The membership of these camps is not cast in stone and trade unions at the Public Service Co-ordinating Bargaining Council (PSCBC) could affiliate themselves to any 'camp'. Rust (2001: 59-60) discusses the necessity for trade unions and argues that

"...the most important function of trade unions is to level the playing fields for management and the workforce because capitalism gives the employer more rights and powers than it does the employee. This power can be taken too far, especially when the employee could be exploited as a result of decisions made by the employer...the trade union can play this role in different ways. The crucial issue is collective bargaining."

3.4.5. *Trade unions support base*

The trade unions admitted to the Public Service Co-ordinating Bargaining Council (PSCBC) are members of the council. However, the trade unions continued membership to the PSCBC is determined by two factors. Firstly, the admission criteria as stipulated by the PSCBC constitution, and secondly, the support base of the trade union, in other words the trade union membership. Without the required second factor a trade union may

not attain admission to the council. Since the inception of the PSCBC, in 1997, the trade union membership varied. To retain their membership to the PSCBC labour at times 'made strange bedfellows'.

The Figure 9 below reflects the grand total of trade union membership at the PSCBC for the period 1998 to June 2007. The grand total does not necessarily reflect the total employees within the Public Service. Huluman (2003:9) indicates, "over 90 percent of public service employees belong to trade unions admitted to the PSCBC, and 20 percent belong to more than one trade union."

Figure 9: Total Trade Union Membership 1998 to 2007

Year	Grand total of trade union membership at PSCBC per year
1998	813 460
1999	981 816
2000	1 027 197
2001	1 017 304
2002	994 465
2003	990 004
2004	997 886
2005/6	989 714
2006/7	998 481

Source: PSCBC Annual Reports for period 2000, 2001, 2002, 2003, 2004, 2005/6, 2006/7

Figure 9 above indicates that the trade union membership since 1998 rapidly increased and reached its zenith in 2000. A noticeable decline in trade union membership is detected for 2002. One factor which influenced the decline in trade union membership was the Public Service Coordinating Bargaining Council (PSCBC) resolution 7 of 2002: Framework Agreement: Transformation & Restructuring of the Public Service. This committed the public service to restructuring and as a result a number of public servants left the employ of the state and subsequently resigned their trade membership as well. Today the collective trade union

membership in the South African public service is only 185 021 trade union members more than when the PSCBC started ten years ago.

According to Huluman (2003:9), the *“ideological background and political affiliations determined trade union membership in the public service; however in recent years employees tend to join other unions that can offer individual services (i.e. Representation in grievance and dispute procedures, and other financial services).”*

Trade unions in general have specific roles to fulfil. These roles include servicing the interest of their members and, representing their members in disputes with the employer. This is not different for the Public Service Coordinating Bargaining Council (PSCBC) trade unions. The PSCBC have concluded its own dispute settlement mechanisms, which are applicable to the PSCBC parties and to public servants in general.

3.5. Dispute resolution mechanisms

The perfect employment relationship does not exist. The employment relationship is fraught with potential conflict because parties to that relationship have different and diverse interests. This applies to the private sector and also to South African public service.

In South Africa the Commission for Conciliation Mediation and Arbitration (CCMA) is the custodian of dispute resolution in the workplace for both the private sector and the public service. As from June 2000 the CCMA has accredited the PSCBC and its four sectoral councils to carry out workplace dispute resolution known as conciliation and arbitration. Besides the aforementioned accreditation, the PSCBC also negotiated and concluded its own dispute procedures for the public service, known as PSCBC Resolution 3 of 1998 (PSCBC 2007).

This dispute resolution procedure is in accordance with chapter four of the 1995 Labour Relations Act. The PSCBC dispute resolution applies to the whole of the public service. However, each of the four sectoral councils where permitted to negotiate and conclude their own dispute resolution mechanisms because they belong to the PSCBC which was accredited by the CCMA. The sectoral dispute resolution mechanisms are applicable to the specific sectoral council where it was concluded. In the event of conflict between the Public Service Co-ordinating Bargaining Council (PSCBC) dispute resolution and the sectoral dispute resolutions, the CCMA may be called to resolve the matter by means of conciliation or arbitration.

The PSCBC and its sectoral councils do not deal with all types of public services disputes. In terms of the 1995 Labour Relations Act (LRA) disputes about the disclosure of information, organisational rights, agency shop disputes, closed shop disputes, picketing disputes, workplace forum disputes, and disputes on the interpretation or application of collective bargaining provision must be referred to the CCMA for resolution. The principle of '*one cannot be the judge in one's own case*' applies, because the PSCBC parties would have concluded the collective agreement/s in the first place.

The PSCBC does not deal with individual employee rights disputes. For that the sectoral councils were accredited and empowered. The nature of the disputes that the PSCBC does deal with relates to disputes concerning the regulation of uniform rules, norms and standards for the public service, disputes that affect employee terms and conditions of service across two or more sectors of the South African public service, and matters assigned to the state as employer.

When a dispute of interests (commonly wage negotiations) arises within the PSCBC, it is first conciliated by agreed upon conciliator. Should the PSCBC disputing parties not reach an agreement through the conciliation

process, any party to the dispute may declare a deadlock to the negotiations. A deadlock situation could escalate into power play, such as the 2007 wage strike on the side of the trade unions or a lock out on the side of the employer. However, the essential services committee (Essential Services Committee) has declared a considerable section of the public service as essential services (including the entire public health sector, the South African Polices Services, Correctional Services etc.). The public service sectors essential services cannot embark on a protected strike in terms of the LRA and must go for arbitration conducted by the CCMA.

3.6. Summary

In a democratic society the social partners in the 'world of work' needs to speak to one another. The relationship that these social partners live in, are hampered by the different interests the parties bring to the relationship. At times the social partners need a 'referee' to intervene, ensuring a cordial relationship. In the South African public service the 'referee' is the Public Service Co-ordinating Bargaining Council (PSCBC).

The PSCBC has four sectors are known as sectoral bargaining councils, namely the Safety and Security Sectoral Bargaining Council (SSSBC), the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC), the Education Labour Relations Council (ELRC), and the General Public Service Sectoral Bargaining Council (GPSSBC). The PSCBC has objectives and the sectoral councils facilitate the attainment of the PSCBC objectives. However, the PSCBC remains the overarching 'mother body' for collective bargaining in the South African public service.

The South African collective bargaining arena is complex and is compounded with specific admission threshold and criteria for trade unions to form part of the PSCBC. Once a trade union enjoys PSCBC

membership, their voting power at the PSCBC is determined by the number of public servants they have on their books.

The main trade union parties at the PSCBC are the South African Democratic Teachers Union (SADTU); Public Servants Association (PSA); National Education Health and Allied Workers Union (NEHAWU); Police and Prison Civil Rights Union (POPCRU); Health and Other Service Personnel Trade Union of South Africa (HOSPERSA); South African Police Union (SAPU); National Professional Teachers Organization of South Africa (NAPTOSA); and the Democratic Nursing Organisation of South Africa (DENOSA).

Historically the PSCBC trade unions entered the PSCBC as individual trade unions. But over time the PSCBC trade unions elected to act together or alternatively unite into blocks. The only trade union that does not currently belong to any specific block is the South African Police Union (SAPU). The largest block with the most voting percentage is the Congress of South African Trade Unions (COSATU) with 51.31% of the voting power on organised labour side. COSATU is followed by the Federation of Unions of South Africa (FEDUSA) with 29% of the voting power, while the Confederation of South African Workers Unions (CONSAWU) has 6.34% of the voting power, and an independent trade union, the South African Police Union (SAPU) enjoys 8.35% of the voting power on the trade union side at the Public Service Co-ordinating Bargaining Council (PSCBC).

In accordance with the prevailing labour legislation in South Africa, the PSCBC has created its own dispute resolution mechanisms. The dispute resolution mechanisms are applicable to all public servants, to the principal members of the PSCBC and the sectoral councils, except where the parties that concluded a collective agreement contest the interpretation and application of the collective agreement. Then independent external

facilitation or adjudication is required. The PSCBC sectoral councils are accredited to manage public servants' individual rights disputes.



CHAPTER 4: LABOUR RELATIONS CHALLENGES IN THE PUBLIC SERVICE

4.1. Introduction

The new legislative alignment gave public servants a host of new rights. In the labour arena the public service collective bargaining parties grappled with new challenges. The last decade, 1997 to 2007, was a busy period for Public Service Co-ordinating Bargaining Council (PSCBC). The PSCBC and its parties set up dispute resolution for the public service. The state as employer and the recognised trade unions concluded a host of collective agreements (see Annexure B) at the PSCBC. Through all of this, the public service experienced four national public service strikes. Strikes or industrial action normally indicates a breakdown in the cordial labour relations and the presence and potential use of power play between the collective bargaining parties.

This chapter surveys the industrial action during the last decade since the establishment of the PSCBC and present an overview of the South African public service labour relations. The chapter explore the types of public service disputes within the South African public service. The public service disputes are subdivided into disputes on the interpretation and application of collective agreements and disputes of rights and disputes interests (protest and strike action). Theses types of disputes are discussed in subsections of the chapter. Each subsection reflects the number of specific disputes lodged over the past three years

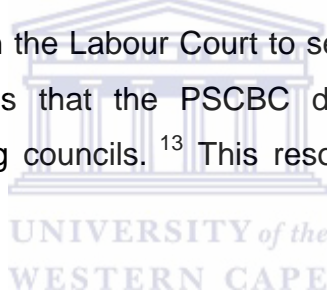
4.2. Types of Public service disputes

The South African labour legislation recognises three grounds on which workers and their trade unions could lodge a dispute, namely disputes on the interpretation and application of collective agreements, disputes of

right, and disputes of interests. The same is applicable to the South African public service.

4.2.1. Disputes on the interpretation and application of collective agreements and disputes of rights

Disputes on the interpretation and application of collective agreements are commonly based on how the employer party or trade union/s interprets how concluded collect agreements should be implemented. In these types of disputes, the matter commonly is adjudicated. The Public Service Coordinating Bargaining Council (PSCBC) has jurisdiction over disputes concerning collective agreements that were concluded in the PSCBC. One example of this type of dispute transpired in 2002 when the Western Cape Provincial Bargaining Council and the Public Service Association (PSA) made an application in the Labour Court to set aside PSCBC resolution 3 of 2000 on the basis that the PSCBC did not have the power to disestablish bargaining councils.¹³ This resolution was set-aside by the Labour Court.



A dispute of right is very simply about the interpretation or application of an existing right. Under the South African labour dispensation employee rights are obtained through legislation, policies or collective agreements concluded between the employer and trade unions. When rights disputes arise within the public service, the PSCBC and its sectoral councils manages the disputes through either conciliation or arbitration. Not all declared disputes proceed to conciliation as employees may withdraw their rights dispute before conciliation. Equally, not all failed conciliations proceed to arbitration as the parties to the disputes could opt to reach settlement agreements at the conciliation stage or any stage prior the arbitration. The Safety and Security Sectoral Bargaining Council (SSSBC), for example, schedules their right disputes for both conciliation and

¹³ Labour Court Case No: J5108/2000

arbitration, therefore, the number of dispute referrals appears to be disproportionate. Figure 10 below indicates the number of disputes (from most recent) within the South Africa public service for the last three years.

Figure 10: Disputes referred to the PSCBC and sectoral councils

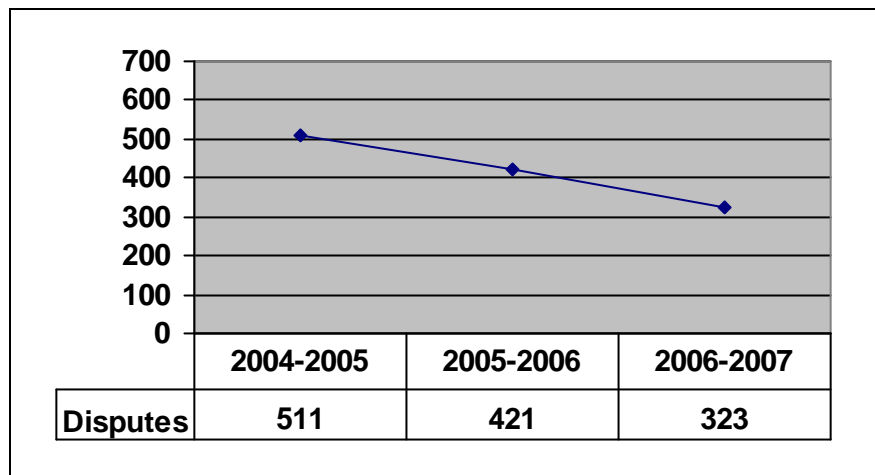
DISPUTES OF RIGHTS						
YEAR	PSCBC	GPSSBC	ELRC	SSSBC	PHSDSBC	TOTAL
2006/7	323	1 479	594	953	600	3 949
2005/6	421	2 655	570	1 095	969	4 086
2004/5	511	2 126	845	915	830	2 722

Source: PSCBC Annual Reports for period, 2006/7, 2005/6, 2004/5

Figure 10 is inclusive of disputes on the interpretation and application of collective agreements and rights disputes. Matters being rescheduled to later dates, which further diversify the PSCBC and sectoral council's dispute referral caseload system, further compound these statistics. In other instances the dispute resolution manager/s of the PSCBC and the sectoral councils opts to only capture the actual dispute hearings that transpired, instead of reflecting the full dispute referrals received from public servants. Figure 10 above includes both conciliation hearings and arbitration hearings concluded under the auspices of the PSCBC.

Figure 11 below indicates disputes on the interpretation and application of collective agreements lodged at the PSCBC for the period June 2004 to June 2007.

Figure 11: Disputes on the interpretation and application of collective agreements June 2004 to June 2007 at the PSCBC

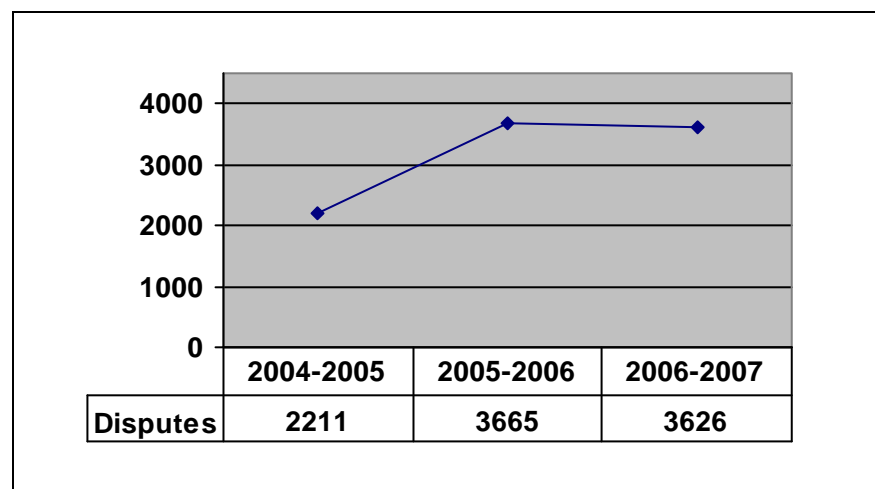


Source: PSCBC Annual Reports for period 2004/5, 2005/6, 2006/7

The disputes lodged at the PSCBC exclude other rights disputes such as alleged unfair dismissal, alleged unfair labour practices, et cetera. Figure 11 above reflects that since the period June 2004 to June 2005 there was a decline in the number of interpretation and application of disputes lodged at the PSCBC.

Figure 12 below illustrate a fluctuation in other types of rights based disputes.

Figure 12: Total rights disputes June 2004 to June 2007

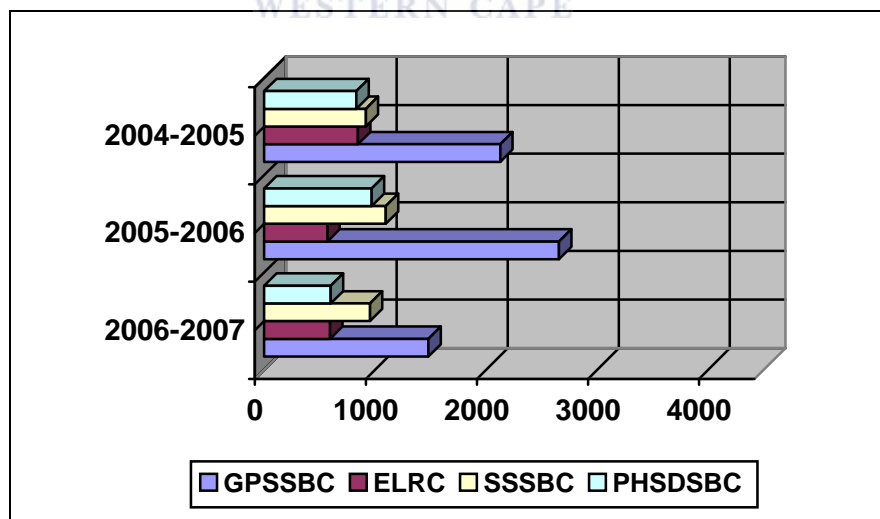


Source: PSCBC Annual Reports for period 2004/5, 2005/6, 2006/7

The statistics in Figure 12 above excludes the one thousand two hundred and fifty five (1255) disputes on the interpretation and application of collective agreements lodged at the PSCBC, and indicates the rights based disputes lodged with the sectoral councils of the PSCBC for the period June 2004 to June 2007. Approximately three thousand six hundred (3600) rights disputes were lodged within the South African public service for the period June 2006 to June 2007. The previous year, 2005 to 2006 reflects a marginal increase in the amount of rights disputes lodged by public servants, while 2004 to 2005 indicates a substantial drop in the number of rights disputes that was lodged. The three years reflected in Figure 12 above collectively indicates that public servants lodged approximately nine thousand five hundred rights (9500) disputes.

Figure 13 below indicates the number of disputes lodged by public servants at the four sectoral councils over the past three years.

Figure 13: Disputes managed by the sectoral councils of the PSCBC



Source: PSCBC Annual Reports for period 2004/5, 2005/6, 2006/7

Figure 13 above indicates that the public servants employed under the auspices of the General Public Service Sectoral Bargaining Council

(GPSSBC) have lodged by far the most disputes for the period June 2004 to June 2007.

Interestingly, the dispute statistics provided by the Public Service Coordinating Bargaining Council (PSCBC annual report 2006/7: 33) indicates that public servants lodged approximately one thousand three hundred (1300) individual disputes not under the name of any trade union during the period June 2006 and June 2007. The same statistics reveals that the Public Servants Association (PSA) lodged just over 800 disputes, the National Education Health and Allied Workers Union (NEHAWU) lodged approximately 500 disputes, the Police and Prison Civil Rights Union (POPCRUI) lodged over 400 disputes, the South African Police Union (SAPU) lodged just under 400 disputes, the South African Democratic Teachers Union (SADTU) lodged approximately 200 disputes, the Health and Other Service Personnel Trade Union of South Africa (HOSPERSA) lodged just under 200 disputes, and just under 400 disputes were lodged by other PSCBC trade unions.

Commonly disputes of rights can be broken into two areas, namely; unfair dismissals disputes and unfair labour disputes.

Figure 14 below indicates that disputes related to promotions and the like, as well as dismissals disputes required most of the PSCBC dispute resolution resources. Figure 14 below reflects the percentage of disputes lodged during the period June 2006 to June 2007. Not all of the disputes were arbitrated. More disputes were settled at the conciliation stage. The PSCBC (2006/7: 34) indicates that of the two thousand and fifty (2750) disputes conducted, 7% reached settlements, while two thousand one hundred and eighty (2180) arbitrations were conducted with 28% reaching settlements. It is important to remember that the types of disputes indicated in Figure 14 could call on adjudication from a third party that is a conciliator, arbitrator or a judge.

Figure 14: Types of PSCBC disputes during 2006/7

Type of Dispute	Percentage of total PSCBC disputes
Promotions and/or appointments	56%
Terms and conditions of service	4%
Dismissals	26%
Salary and benefits	4%
Other	1%
Mutual interests (strike action)	1%
Interpretation and application of collective agreements	12%

Source: PSCBC Annual Report 2006/7

A decision about who is right and who is wrong are made for the parties and are based on the merits of the individual case. Disputes of interests do not follow the same route as rights based disputes.

4.2.2. Disputes interests

A dispute of interest is established when the parties to the collective bargaining arena reach a deadlock during the negotiation phase of establishing a new right to be contained in a collective agreement or as a result of the negotiations. Neither the employer party nor the trade unions has obtained the right, which is being bargained, interests disputes are about the creation of new rights.

The Public Service Co-ordinating Bargaining Council (PSCBC) is the central collective bargaining council for the South African public service. A large proportion of its work entails bargaining new rights for public servants. This collective bargaining includes negotiations on salaries or wages for the public service. Huluman (2003: 16, 2005: 16) indicates “*that during 1997, 1999, and 2004 the state and organised labour failed to reach an agreement over wages and disputes were declared within the PSCBC.*” The same situation was repeated during 2007. However, public servants cannot automatically embark on strike action. The public service trade unions have to adhere to the regulations indicated in the Labour

Relations Act (LRA) before a strike is protected in terms of the LRA. Furthermore, not all public servants are allowed to embark on a protected strike action. The LRA by means of section 71 (8) created the essential service committee.

Since 1997 the essential services committee declared a substantial portion of the South African public servants as an essential service, including the whole Health Department, the South African Police Services (SAPS) and the Department of Correctional Services. The public service departments declared as an essential service does not have the right to strike. The Departments declared as essential services should have minimum services agreements in place in the event of industrial action. Employees employed in essential services goes on compulsory arbitration in the event of a dispute of interests being established. The LRA also provides that public service essential services (and private sector) employees could enter into minimum service level agreements with the state as employer. Bell (2007) indicates that

“... when the public sector unions go on strike, the bitterest battles may not be on the picket lines, but in the courts. For this strike will throw into sharp relief a major clash between the constitution and the labour laws...The 1997/98 classification notice covers all workers in areas designated as essential. For example, not only are medical and paramedical staff and nurses in the health sector so classified, all support staff also fall into the same category. The government, as the employer, seems certain to approach the courts to interdict tens of thousands of workers from exercising their constitutional right to strike...This would mean that "essential service" unions on strike would provide, by law, a minimum level of service that would cover all emergency and life-threatening situations.”

The 1997, 1999, and 2004 public service strikes were relatively quiet in comparison to the 2007 public service strike. During the 2007 public service strike the state as employer dismissed essential services employees for whom the protected industrial action became illegal in terms of the LRA provisions and in the absence of a minimum service

level agreement/s. The Congress of South African Trade Unions - COSATU (2007) blames the state as employer for this by indicating

“...While we will not encourage anyone to break the law, the meeting demanded that the government immediately withdraw its threats to dismiss workers who are exercising their constitutional right to strike in support of their claim for improved pay and working conditions. These threats are despite the absence of minimum service agreements which the government has refused to sign since being requested to do so by the unions in 1999.”

The essential services employees that was dismissed was later reinstated into the employ of the public service and issued with final written warnings for participation in unprotected industrial action. However, the principal of ‘no work, no pay’; which is in line with section 67 of the LRA; applied to the public servants that embarked on protected industrial action.

The Congress of South African Trade Unions – COSATU (2007) indicated that 700 000 public servants participated on during the 2007 public service strike. The unofficial statistics provided by the Department of Public Service and Administration (DPSA) estimates that between 250 000 to 300 000 public servants was out on strike each day of the June 2007 strike which lasted twenty eight working days.¹⁴ What became apparent is that both the state as employer (DPSA) and the Public Service Co-ordinating Bargaining Council (PSCBC) trade unions lacks the tools to provide accurate statistics on the public service strikes.

Statistics provided by the Department of Labour for the strike actions during 1997, 1999 and 2004 is equally unreliable for this study. These statistics are not public service specific. The Department of Labour’s statistics includes the public service as part of the industry sector known as community services. The national departments excluded by the

¹⁴ Data obtained through personal contact and is unofficial

definition of the public service and the scope of the PSCBC are included in the statistics reported by the Department of Labour.

In many instances a strike in the private and public sector is seldom limited to that industrial sector. The 2007 public service strike impacted on the broader South African society. Evidence of this is the concerns expressed by the South African Council of Churches (SACC) (2007), which issued a media statement

“The South African Council of Churches is profoundly concerned about the impact that the current industrial action in the public service sector is having on ordinary South Africans, particularly those living in poor and marginalised households.”

The education sector was particularly affected by the public service strike. The education trade union at the PSCBC participated in the strike action. The Mail & Guardian online (2007) reported, *“...the department and teacher unions are to discuss a recovery plan...”* The Council of Education Ministers (2007) constructed a national educational recovery plan to aid learners who lost out on valuable school time while their teachers were out on strike.

The 2007 public service strike was also stained by incidents of violence. The media (News 24, 2007) reported the strike action, in particular the statement by the president of the country speaking in the National Assembly on the violence experienced during the public service strike *“What kind of society we are building and what moral lessons we are imparting when insults, violence against fellow workers and damage to property become the stock-in-trade during protests of this kind?”*

4.3. Summary

The last decade of the existence of the Public Service Co-ordinating Bargaining Council (PSCBC) was full of activity. During this period the PSCBC and its sectoral councils managed thousands of rights based disputes. Disputes about promotions and appointments accounted for

more than fifty percent of all disputes lodged during the period June 2006 to June 2007. An arbitrator normally adjudicates rights based disputes, but the statistics indicates that settlement of disputes is also attained under the auspices of the PSCBC.

Since 1997 the South African public service experienced nationally, four strikes. The strikes were not inclusive of all public servants, as certain employees could not legally strike because their services were declared as essential services. However, those essential services public servants who embarked on strike action, were dismissed and later reinstated. Public servants that legally striked had to forgo their salaries for the period/s on which they were out on strike.

The state as employer could not provide accurate statistics on how many public servants partook in the strike. A difference of 450 000 public servants exists between what the Public Service Co-ordinating Bargaining Council (PSCBC) trade unions claim to have been out on strike and what the Department of Public Service and Administration (DPSA) was able to unofficially provide.

The public service strike had its impact on the broader South African society. The church made a call for a speedy resolve to the interest dispute and other sectors of the society also suffered. Noticeably the education department made attempts to address the impact the strike had on learners. Violence was reportedly present during the South African public service strike to the extent that a call was made in the national assembly for the violence to come to an end.

In the South African public service the state as employer and its recognised trade unions have the PSCBC to aid in the achievement of cordial labour relations. To this extent the PSCBC has set itself objectives to measure its performance in this regard. The following chapter provides

analysis of whether the PSCBC meets those objectives, measured against the South African public service labour relations activities.



CHAPTER 5: ANALYSING THE ACHIEVEMENT OF PSCBC OBJECTIVES

5.1. Introduction

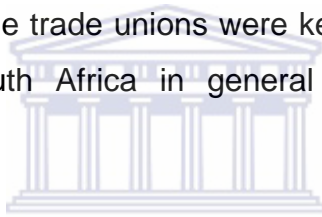
In the previous chapters collective bargaining was defined, the public service described, who the parties involved at the PSCBC and sectoral bargaining councils are, together with their membership, and labour relations challenges from within the South African public service are stated. This chapter analyses whether the Public Service Co-ordinating Bargaining Council (PSCBC) achieved the objectives it has set for itself. The discussions in the previous chapters are used as the background for this analysis.

This chapter is organised into six sections. Each discussion coincides with a PSCBC objective. The first aspect discusses the South African public service, within a democracy, practising social dialogue to generally enhance labour peace, and promoting a sound relationship between the PSCBC principal parties. The second aspect discusses whether the PSCBC principal parties use the PSCBC as a tool to negotiate and bargain collectively to reach agreements. The third aspect discussed is how the PSCBC is able to resolve public service disputes. The fourth section discusses whether the PSCBC are able to conclude, supervise and enforce collective agreements. The fifth section discusses how the PSCBC is able to comply with duties and functions prescribed in the legislation. The sixth section discusses how the PSCBC is able to deal with matters that affect the interest of the PSCBC parties. The final section of this chapter is a summary of the aforementioned sections.

5.2. Public service social dialogue within a democracy

Historically the South African public service was not exposed to democratic values. Public service collective bargaining was undermined through legislation that did not recognised the then budding trade unionism within the public service. When the state restricted trade union activity within the public service a surge in industrial action was experienced within the public service. The increase in public service industrial action inevitably influenced the effective and efficient service delivery of the state.

Since 1994, the South African public service lives within a democratic state. The state and the trade unions were key agents driving the political transformation in South Africa in general and the public service in particular.



The state promulgated labour legislation such as the 1995 LRA providing protection for all South African employees, inclusive of the public servants. In fact the South African legislative body was prescriptive to the public service. The 1995 LRA states in section 35 that there *“will be a bargaining council for the public service, as a whole, to be known as the Public Service Co-ordinating Bargaining Council (PSCBC).”* Huluman (2003:6) provides more detail by qualifying the importance the state append to the creation of the PSCBC,

“...unlike the private sector bargaining councils, which are formed through a voluntary process, the Labour Relations Act established the Public Service Co-ordinating Bargaining Council (PSCBC) as a mandatory bargaining council for the public service.”

In the constitutional democratic state of South Africa, public servants enjoys the constitutional right to fair labour relations practices and the right to belong to trade unions. Comparing the old collective bargaining experiences of the South African public service with the current practices a

conclusion is made that collective bargaining is no longer being undermined by the state. This, however, may be a double-edged sword for the South African government. On the positive side it indicates the South African government's willingness to engage in collective bargaining and social dialogue with its recognised trade unions. However, the danger exists that the same government has vested interest in the Public Service Co-ordinating Bargaining Council (PSCBC), and as an active partner within the PSCBC, it may use its influence to 'manage the process'.

The South African public service trade unions should guard against the possible 'undue management' of the PSCBC by the state to ensure that the hard won democratic values are maintained within the public service. At the very least the PSCBC creates the possibility for negotiated agreements between government and organised labour.

Eight trade unions are admitted to the PSCBC (2006/7). These trade unions also have a vested interest in the success of the PSCBC because of their constituency. Each one of the recognised trade unions represents at least twenty percent of the South African public service workforce (PSCBC 2006/7). These trade unions ensure that the rights of their members are adhered too. This includes negotiating for better salaries for their members. A tool available to the trade unions when negotiating interests' issues, such as salary increases, is power play. The unions' use of the strikes indicated their preparedness to use such power play in negotiations. Subsequently, four national strikes took place since the inception of the PSCBC.

Strikes do not necessarily indicate a breakdown in social dialogue, but rather a deadlock around a particular interest's issue. Evidence of this is the fact that the PSCBC parties were willing to meet during the industrial action at the PSCBC in an attempt to reach an agreement in resolving their deadlock/s related to the wage negotiations.

The role that the PSCBC fulfils is neither that of an employer nor that of an employee. The PSCBC on its own is nothing but a facilitating body. It is an institution in the middle, between the state as employer and the recognised trade unions to which the state employees are members. It is strengthened by the importance that the employer and trade union parties attach to it, hence, a co-dependent relationship exists between all the parties active at the PSCBC.

The fact that the state is a PSCBC partner leads to the enhancement of labour peace within the public service and the promotion of a sound relationship between the state as employer and its employees. The PSCBC does contribute to social dialogue in the public service by means of the commitment of the social partners. It does so by facilitating the employer-employee relationship through creating and maintaining a forum for public service social dialogue.

The PSCBC contributes to social dialogue by bringing the parties together for them to engage with one another in a democratic fashion. The PSCBC would be unsuccessful should the state or the trade unions withdraw from the PSCBC. The three-way (the state, organised labour and the PSCBC) relationship at the PSCBC is thus co-dependent. The PSCBC needs the state as employer; it needs the state's social partners, the recognised trade unions, and in the same stratum the state and the recognised trade unions needs the PSCBC to maintain their relationship and strengthen the social dialogue interactions between them. The business of the PSCBC is fairly new in the South African context; therefore one must bear in mind that the state would want to manage the public service and the trade unions would want to act in the interest of its members, these can become hugely diverse interests. Through the PSCBC the tripartite negotiation processes for collective bargaining has been institutionalised in the South African public service.

5.3. Reaching Agreements

The intention of the current labour dispensation is to foster the establishment and growth of big trade unions as a counter measure to the mushrooming of smaller trade unions commonly found in the private sector. It is also commonly understood that the bigger and stronger the trade union party is that engage in collective bargaining and social dialogue, the deeper the vested interests are of such trade unions.

The success of the PSCBC should not be measured by the deadlocks reached (or strike actions) within the public service, but rather by the measurement tool used of the absence of industrial action. During the first decade of the existence of the PSCBC an average of 12 collective agreements a year was reached. Understandably, the PSCBC negotiated a host of collective agreements, which entrusted new rights to public servants. For example new rights ranging from an agency shop agreement to agreements over conditions of service matters including benefits like pensions, medical aid, housing, allowances, grievance and disciplinary procedures, training and development issues. The PSCBC has also entered into collective agreements relating to socio-economic issues like job creation and health issues like the Policy on HIV/AIDS (Annexure B provides a list of agreements concluded at the PSCBC between 1998 to 2007). The fact that the PSCBC only makes news headlines during periods of industrial action does injustice to the work accomplished by the PSCBC.

Discussions at the PSCBC are not limited to the negotiations table, but a healthy consultative process is evident. Testimony of such processes is consultation and negotiations that are practiced at regular intervals. For example in support of the negotiations processes, the PSCBC has established a variety of committees and task teams to support the collective bargaining process.

The South African public service is still in transformation and many changes still need to be achieved. The changes will call upon the PSCBC to negotiate and bargain collectively to reach agreement on matters of mutual interest to the state as employer and employees represented by admitting trade unions to the PSCBC. An underlying factor that will determine the swiftness of the changes will be the level of trust that is experienced between the PSCBC principal parties.

Collective agreements between an employer and trade union/s are easier concluded when trust exists between the negotiating parties. The action of the South African government of providing legislation, such as the 1995 Labour Relations Act (LRA), for the establishment of the PSCBC is an indication of its intention to promote social dialogue. Individual PSCBC parties always has a 'backdoor open' once they have concluded a collective agreement. Firstly, in terms of section 23 (4) Labour Relations Act they can give notice of their intended withdrawal from any collective agreement previously concluded. Or secondly, any party to the PSCBC can declare a dispute, should the perception be that the collective agreement/s are incorrectly interpreted or applied. Evidence of the second option is the one thousand two hundred and fifty five (1255) disputes on the interpretation and application of collective agreements lodged at the PSCBC over the past three years.

5.4. Resolving Public Service disputes

The South African public service is the largest single employer in the country (DPSA 2003). It employs approximately one million public servants. Surely this must be a breeding ground for disputes. Dispute lodged by the South African public servants are managed through the PSCBC dispute resolution mechanisms.

The PSCBC was successful in creating, establishing and maintaining dispute resolution mechanisms for the South African public service. An analysis of the disputes lodged within the four sectoral councils of the PSCBC indicates that the General Public Service Sectoral Bargaining Council (GPSSBC) received especially higher dispute referrals over the past three years in comparison to the rest of the public service. Although no specific reason can be attributed to this, it is noted that during the period June 2004 to June 2007 that the PSCBC dispute resolution mechanisms received approximately 3600 rights disputes.

The rights dispute statistics of the PSCBC and its sectoral councils could be analysed in one of three ways. Firstly it could be an indication that the state as employer is an unfair employer. Secondly, it could indicate 'over eagerness' of the PSCBC trade unions to service the interests of their members. Or thirdly, it could be a case of public servants claiming their previously denied rights.

The first opinion is not relevant as the state employer is bound by the South African constitution and prevailing labour legislation. If the state as employer is unfair, the independent South African courts and adjudicators will call the state eventually to order. The second opinion is perhaps 'closer to home', but eventually the eagerness of the trade union may become costly, as the independent South African courts and adjudicators are empowered to make cost orders against trade unions for frivolous and vexatious dispute referrals. The third opinion could be correct. It seems that the public servants are 'waking up' to claiming their labour rights. South African public servants lodged approximately 1300 individual disputes not under the name of any trade union during the period June 2006 and June 2007 (PSCBC 2007). A concern is the number of unsubstantiated disputes that are referred to the dispute resolution mechanisms by public servants.

Fraser-Moleketi (2007) indicates, “...submitting frivolous and vexatious cases does not assist matters. On the other hand, the lack of proper implementation of modalities can lead to poor understanding of employees' rights, which in turn can lead to unnecessary disputes.” The disputes referred to the dispute resolution mechanisms by the South African public servants are outside the control of the PSCBC parties as a collective. However, as individual parties, the state as employer and the trade unions could intervene through, perhaps, training interventions with a view to educate public servants on their new rights and obligations obtained in a democratic dispensation.

Public servants with longer years service within the employ of the state have experienced a longer period without the current labour relations dispensation and are less likely to rush into declaring rights disputes. The opposite may transpire with younger employees joining the ranks of the public service. Therefore, the trend of more individual rights disputes being declared is likely to increase over the coming years. The natural attrition of South African public servants is likely to be a contributor in establishing the trend of more individual rights disputes being lodged.

The question is whether the number of disputes lodged is inappropriately high or relatively low? This is difficult to establish, as the South African public service cannot easily be measured against private sector standards. On face value it is a numbers game to assume that the indications are that the rights disputes lodged over the last three years are relatively low, considering that the South African public service employs close to one million employees and that approximately 3600 rights disputes were declared.

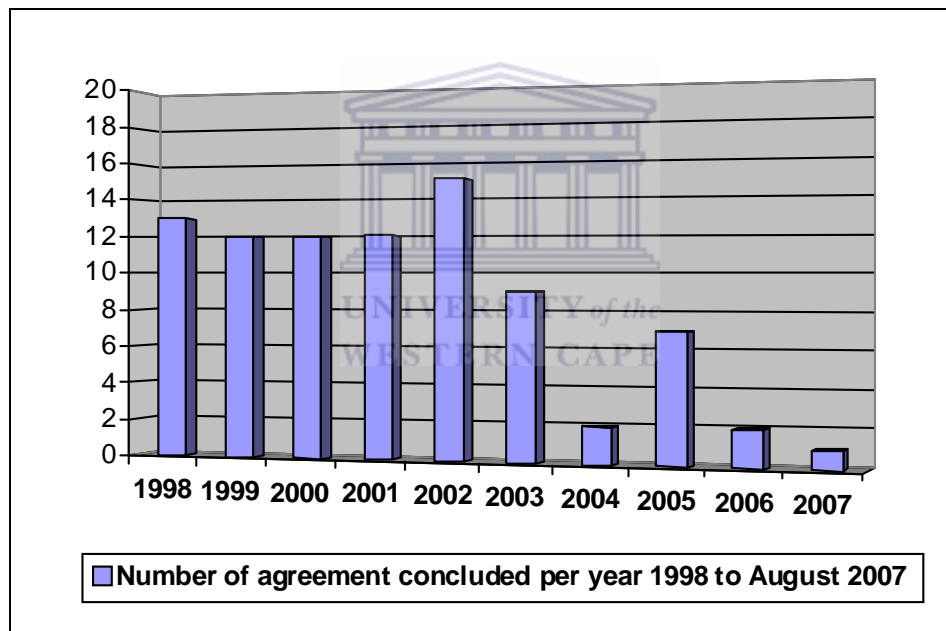
The challenges identified for dispute resolution in the public service are indicative of a relatively young and developing dispute resolution system. However, the PSCBC was able to provide mechanisms for the resolution of disputes between the employer and trade unions admitted to the

PSCBC, and to perform dispute resolution functions between the employer and employees within the registered scope of the PSCBC, where the employer has the requisite authority to resolve such disputes.

5.5. Concluding, supervising and enforcing collective agreements

The PSCBC concluded an average of twelve (12) collective agreements over the past decade. A complete list of PSCBC collective agreements is to be found in Annexure B for easy reference. Figure 15 below indicates the PSCBC collective agreements concluded per year.

Figure 15: PSCBC collective agreements concluded per year



Source: PSCBC 2007

Figure 15 above indicates that on average twelve collective agreements was concluded at the PSCBC for 1998, 1999, 2000, 2001 and 2002. This could be attributed to the new legislative framework for the public service and the newly established PSCBC. However, a noticeable decline is present in the number of collective agreements concluded since 2003.

The state as employer and as a PSCBC principal party makes it clear that public service collective agreements and policies must be adhered to. Fraser-Moleketi (2007) states “...non-compliance with national policies and collective agreements is not an option. To enforce compliance through dispute resolution mechanisms or even designated agents appointed by bargaining councils is an indictment on the public service.”

This study focuses on the PSCBC and not on the workings of individual government departments or provincial administrations. Therefore, it is difficult to determine to what extent the PSCBC as a collective body enforces the concluded collective agreements, as each individual state department are accountable for the implementation of concluded collective agreements. Figure 16 below indicates the number of disputes referred to by the PSCBC for the period 2004 to 2007. In terms of the dispute resolution mechanisms for the public service, the PSCBC was called upon to make rulings on the enforcement of collective agreements on 1255 occasions during the aforementioned period.

Figure 16: PSCBC disputes 2004 to 2007

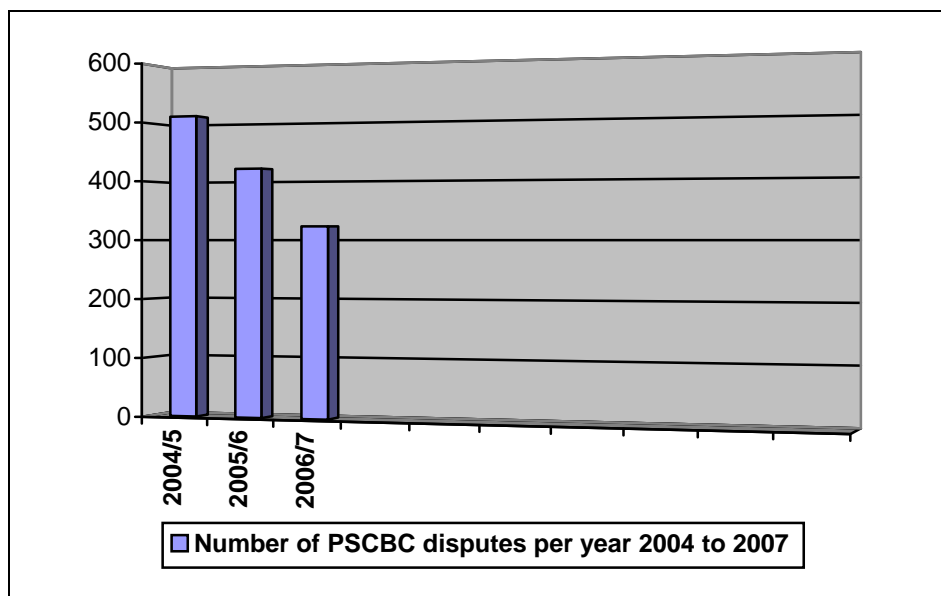


Figure 16 above reflects the interpretation and implementation of collective agreements disputes referred to the PSCBC for the period 2004 to 2007. During 2004/5 five hundred and eleven (511), during 2005/6 four hundred and twenty one (421) and during 2006/7 three hundred and twenty three (323) of this type of disputes was referred to the PSCBC. Figure 16 above indicates the indictment on the public service that Fraser-Moleketi refers to. Clearly, the area of supervising and enforcing collective agreements has room for improvement. The state and the trade unions should improve their monitoring role in order to ensure that the PSCBC objective of concluding, supervising and enforcing collective agreements for the South African public service are more successfully achieved.

5.6. Comply with duties and functions provided for in legislation

The Labour Relations Act (LRA) prescribes certain functions to the Public Service Co-ordinating Bargaining Council (PSCBC). The PSCBC may in terms of its constitution and by resolution designate a sector of the public service for the establishment of a bargaining council. This was done by the PSCBC when the three sectoral councils were established. The PSCBC 'inherited' the Education Labour Relations Council (ELRC) from its predecessor.

The individual PSCBC parties has to ensure that their constituency comply with the duties and functions provided for in legislation.

5.7. Dealing with matters that affect the interest of the PSCBC parties

Besides collective bargaining and continued social dialogue, the PSCBC also performs dispute resolution for the South African public service. The process of collective bargaining and dispute resolution is costly.

The cost of running the PSCBC does not remain constant. Therefore, the PSCBC parties regularly revisit such matters that influence the interests of the PSCBC parties. The PSCBC (2003/4) annual report indicates that *“...the caseload has steadily increased... costing PSCBC over 11.5 million Rand in the last financial year. This prompted the increase of the levies paid to PSCBC and Sector Councils.”*

5.8. Summary

The PSCBC was established by legislation. The same government that created the PSCBC is also involved as a social partner, which entails that the state has to share certain decision-making powers with the recognised trade unions. When a deadlock situation is reached in a democracy it does not signify the termination of social dialogue activities. The PSCBC was able to continue to fulfil its role as facilitating body between the state as employer and the eight trade unions.

Successful negotiations depend on the interests that the social partners bring to the collective bargaining table. Reaching collective agreements at the PSCBC is aided by the fact that the state as employer has a vested interest and the individual recognised trade unions at the PSCBC represent at least twenty percent of the South African public service employees. The PSCBC has created numerous task teams and committees to aid the negotiation processes and making the conclusion of collective agreements easier.

The PSCBC created its own dispute resolution mechanisms for the public service. Indications are that public servants are ‘waking up’ to claiming their labour relations rights. The dispute resolution structures created by the PSCBC and the sectoral councils seem to be ready to manage the current and future demands for dispute resolution within the South African public service.

Initially, during the first few years of the existence of the PSCBC there was a ‘flurry’ of collective agreements being reached at the PSCBC. Since 2004 there seems to be a tapering down of the number of collective agreements being signed by the PSCBC parties.

The PSCBC successfully created sectoral councils, including provincial competencies. The sectoral councils collectively bargain on sector specific issues on a national level, while the provincial chambers perform collective bargaining on a Provincial level.

The PSCBC ensures its future existence by continually revisiting issues that influence the interests of the PSCBC parties.



CHAPTER 6: CONCLUSION

6.1. Introduction

South African public servants enjoy freedom of association and may join trade unions. These trade unions collectively bargain with the state as employer at the Public Service Co-ordinating Bargaining Council (PSCBC) over the service benefits of public servants.

The relationship between the state as employer and its employees are regulated by legislation. An example of such legislation is the Labour Relations Act (LRA) of 1995, which called for the establishment of the Public Service Co-ordinating Bargaining Council (PSCBC) as a bargaining council for the South African public service.

This study aspired to discuss three aspects. Firstly, to provide a definition of the South African public service. Secondly, to provide a definition of collective bargaining, and lastly, to measure the performance of the PSCBC against the objectives it has set for itself

The first aim of the study was to define the South African public service and to indicate who falls under the registered scope of the PSCBC and which part of the commonly believed 'public service' are excluded from the definition of the public service as indicated in the South African Public Service Act of 1994 and the 1995 LRA. The discussion provides an indication of the size of the South African public service, both in structure and in the number of employees.

The second aim of the study was to provide a definition of collective bargaining and social dialogue. The definitions provided by the International Labour Organization (ILO) discussed together with the definition provided in the 1995 LRA was used as a departure point in defining collective bargaining and social dialogue.

The PSCBC had set objectives for itself; hence, the third and final aim of the study was to measure the performance of the PSCBC against its objectives.

6.2. South African public service defined

Chapter 2 provides an investigation into the definition of the South African public service. The chapter also undertook to provide a definition for collective bargaining and social dialogue within the South African public service, as well as providing for a brief historical overview of collective bargaining and social dialogue experienced by the public service. Chapter 2 concluded that Chapter III of the Public Service Act of 1994 provides the organisational framework for the South African public service while the 1995 Labour Relations Act excludes certain national departments from the collective bargaining processes as practised by the Public Service Coordinating Bargaining Council (PSCBC). The conclusion reached in relation to the definition of the South African public service was that local government sphere is excluded from the commonly understood definition or organisational framework of the South African public service. Furthermore chapter 2 also concluded that not all national departments identified within the Public Service Act are included in the 1995 Labour Relations Act for the purpose of collective bargaining at the PSCBC. National Departments such as the South African National Defence Force (SANDF), the National Intelligence Agency (NIA), and the South African Secret Service (SASS) are excluded from the scope of the PSCBC for the purpose of collective bargaining.

The final conclusion provided in chapter 2 indicates that historically the South African public service did not practise collective bargaining and that social dialogue was 'taboo'. However, the promulgation of the Labour Relations Act, 66 of 1995 changed the face of labour legislation and in particular the face of collective bargaining in South Africa. Particularly,

within the South African public service a new collective bargaining dispensation was made mandatory.

6.3. The PSCBC objectives and structure

Chapter 3 provides an investigation into the establishment and institutional arrangement of the Public Service Co-ordinating Bargaining Council (PSCBC). An indication of the PSCBC criteria membership as well as which trade union parties are represented around the negotiations table at the PSCBC is provided. Chapter 3 concludes by providing an investigation into the dispute resolution mechanisms that the PSCBC and its councils provide for the South African public service. Chapter 3 concludes that the current legislative framework completely changed the historical picture of collective bargaining within the South African public service. The legislation created the PSCBC and made its establishment compulsory. Once established, the PSCBC had set for itself objectives against which the effectiveness of the PSCBC could be measured. The PSCBC created four sectoral councils namely the Safety and Security Sectoral Bargaining Council (SSSBC), the Public Health and Welfare Sectoral Bargaining Council (PHWSBC), the Education Labour Relations Council (ELRC), and the General Public Service Sectoral Bargaining Council (GPSSBC). Together the PSCBC and the four sectoral councils set out to attain the objectives of the PSCBC

The final conclusions reached in chapter 3 are that the state as employer and its recognised trade unions are the principal parties to the PSCBC. The trade unions must meet the membership threshold of fifty thousand (50 000) to be recognised and admitted to the PSCBC. The South African public service has approximately one million employees. These employees are represented by eight recognised and admitted trade unions at the PSCBC that represents twenty percent of the South African public servants. These trade unions 'carry' smaller trade unions that do not meet the admission threshold. The PSCBC has created its own dispute

resolution mechanisms for the South African public service. The dispute resolution mechanisms manage thousands of public servant's rights based disputes.

6.4. Labour relations challenges in the public service

Chapter 4 discusses the labour relations challenges within the South African public service. The chapter investigates the types of disputes commonly found within the South African public service. Chapter 4 concentrates on the number of public service disputes lodged during the period 2004 to June 2007. The chapter concludes that two types of disputes are commonly found within the public service, namely interests based disputes and rights based disputes. Interest based disputes has the potential to enter into power play and the South African public service experienced four national strikes from 1997 to 2007. The chapter also concluded that the PSCBC manages rights disputes lodged by public servants through the dispute resolution mechanisms created by the PSCBC and its four sectoral councils.

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WESTERN CAPE

6.5. Achievement of PSCBC objectives

Chapter 5 investigates whether the PSCBC has met the objectives it has set itself. The achievement of the PSCBC objectives could strengthen or contribute to social dialogue in the South African public service. The main conclusions reached are that the interactions between the state as employer and its recognised trade unions have borne fruits. The argument is raised that the PSCBC is a facilitating body, where a co-dependent relationship exists between all the PSCBC parties. Therefore, the PSCBC as a facilitating body achieved its objectives. Another conclusion is that although the PSCBC's establishment was made compulsory by legislation, the South African state as employer has a vested interest in the success of the PSCBC as the price to pay for a breakdown in collective bargaining and social dialogue is high. A measure of success of the PSCBC is

evident in the number of collective agreements the PSCBC parties were able to conclude. However, a concern is that during the last four years it is evident that noticeably less collective agreements were reached at the PSCBC compared to the preceding six years of its existence. The strike or dispute statistics suggests that public servants are 'waking up' to claiming their labour relations rights and it becomes likely that the PSCBC could experience a marked increase in the number of disputes lodged by public servants. Finally the evidence indicates that the PSCBC successfully created sectoral councils that collectively bargain on sector specific issues on a national level.

6.6. Matters for future investigation

The South African public service is still in the process of transforming from serving the minority of citizens to providing complete public services to all people residing within the borders of the Republic. An all-inclusive public service would entail the expansion of services delivered to all of the citizenry and streamlining government systems and processes. To achieve this, the South African state intends to establish a single South African public service. As indicated by Fraser-Moleketi (2007)

“One of the strongest arguments for a Single Public Service (SPS) is the facilitation of mobility between institutions and spheres of government. Numerous complications have arisen in the transfer of personnel especially as regards conditions of service and related matters. The harmonisation of conditions of service requires some form of rationalisation. The challenge is to create a more cohesive workforce consisting of all spheres of government and most importantly, a multi-skilled and mobile cadre of public servants to deliver integrated services where the need exists...”

This was briefly mentioned during this study and further investigation on the matter needs to be undertaken in future. The impact of the public service unification within South Africa will affect the current PSCBC members and the principal members involved at the collective bargaining structures of the current local government sphere. Another matter that

should be considered for future study is an analysis of public service disputes. Such analysis should be done on an ongoing basis as it could provide for the foundation of labour relations trends within the South African public service. Labour relations within South Africa will continue to develop and evolve. The past decade of centralised collective bargaining and social dialogue in the public service of South Africa proved to have been a development curve with many challenges for all the parties involved.

I acknowledge that the primary data could be considered as weak. Therefore, future research on this subject matter should demand broader consultation than the annual reports of the PSCBC; the Labour Relations Act, the Public Service Act, and conference and seminar discussion papers be engaged as a follow-up on primary material utilised in this thesis. Time constraints have limited me to consulting the aforementioned.

Chapter four largely relies on statistical data as an analyst of dispute within the South African public service. Future research may improve by providing more detail into the resolution of public sector disputes.

The examination reports of this thesis indicated that more attention should be paid and a more detailed analysis should be made of the public service strike of 2007. Particular attention should be applied to the effects of the teachers strike. This indicates a field of study for future research on this particular field.

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Annexure A

QUESTIONNAIRE

The Public Service Co-ordinating Bargaining Council (PSCBC) has, amongst others, the objective of promoting a sound relationship between the State as employer and its employees. The purpose of this questionnaire is to examine whether the PSCBC strengthens/ contributes to social dialogue in the public service in South Africa. This questionnaire forms part of a research thesis into social dialogue as practised by the PSCBC.

This questionnaire was sent to nine Employee parties and the one Employer party active within the PSCBC.

Kindly complete the questionnaire on the next page, and return via e-mail to the sender (aclarke@pgwc.gov.za) by 31 March 2006.

Your participation in this research is highly appreciated.

QUESTIONNAIRE

Indicate your choice by making an X in the appropriate box, using the following:

Legend: **1= Strongly disagree; 2= Disagree; 3=Undecided; 4=Agree; 5= Strongly agree**

No	Statements	Degree of Preference				
		1	2	3	4	5
1	The structure of the PSCBC (including the sector councils) promotes a sound relationship between the state and its employees					
2	Bargaining over salaries takes place at sectoral level					
3	Bargaining over conditions of service for public service employees takes place at sectoral level					
4	The membership threshold of 50 000 trade union members for admission of trade unions to the PSCBC promotes negotiation and collective bargaining in the public service					
5	The 50 000 trade union membership should be increased					
6	Multi-term salary agreements enhances labour peace					
7	Tasks teams established by the PSCBC and its structures promotes a sound relationship between the State as employer and it's employees					
8	The dispute mechanisms of the PSCBC and its structures contributes towards labour peace					
9	The allocation of voting power within the PSCBC is fair					
10	Dual trade union membership within the public service should be abolished					
11	The PSCBC allows trade unions to assert themselves and engage in constructive and meaningful bargaining					

Annexure B

PSCBC Resolutions concluded for the period 1998 to August 2007

1998

- Resolution 1 Agency Shop Agreement
- Resolution 2 Levy Agreement
- Resolution 3 Dispute Resolution Procedures of Council
- Resolution 4 Agreement on Interim Measures on Paid Leave for Negotiators
- Resolution 5 Amendments to the Constitution: Representatives to Executive Committee
- Resolution 6 Separation of The Dual Designated post classes of Chief Specialist/ Professor, Chief Clinical Psychologist/Professor, Chief Stomatologist/ Professor, chief family Practitioner/ Professor and Chief Clinical Pharmacologist/ Professor in the personnel class management echelon.
- Resolution 7 Improvement Plan for 1998/99
- Resolution 8 Collective Agreement: Trade Union Negotiators and Trade Union Officials for the Public Service Co-ordinating Bargaining Council.
- Resolution 9 Designation of PHWSBC
- Resolution 10 Designation of GPSSBC
- Resolution 11 Full time Shop Stewards
- Resolution 12 Designation of SSSBC
- Resolution 13 Agreement on Senior Management

1999

- Resolution 1 Amendment to the Constitution: Domicillium Clause

Bibliography and annexures

Resolution 2	Disciplinary Code and Procedures
Resolution 3	Agreement on Remunerative Allowances and benefits
Resolution 4	Increase in Pensionable Service for Selected DWAF employees
Resolution 5	Reduction in Employer Contribution to GEPF
Resolution 6	Upgrades for prosecutors
Resolution 6	Agreement on a day's pay contribution to the job creation trust
Resolution 7	Amendment to the Constitution: Clause 18.11 – Submission of Auditor's Report to the Registrar
Resolution 8	Transitional Measures for Disciplinary Code and Procedures
Resolution 9	Formation of Sectoral Bargaining Forums for Health and Welfare and General Public Service
Resolution 10	Adoption of Incapacity Code and Procedures
Resolution 11	Amendments to Resolution 3 of 1998: Dispute Resolution Procedures of Council
Resolution 12	Adoption of Incapacity Code and Procedures in respect of ill health

2000

Resolution 1	Agreement on a day's pay contribution to the Job Creation Trust
Resolution 2	Allocation of funds to Sectoral Bargaining Councils and Related Matters
Resolution 3	Establishment of Bargaining Councils
Resolution 4	Amendment to Resolution 2 of 1999
Resolution 5	The Implementation of the Dispute Resolution Procedures of the Council
Resolution 6	The appointment of a Panel of Conciliators and Arbitrators

- Resolution 7 Improvement in the Conditions of Service of Public Service Employees for 2000/2001 financial year
- Resolution 8 Amendment to Resolution 3 of 2000
- Resolution 9 Senior Management Service
- Resolution 10 Amendment to Resolution 3 of 1999: Payment of Leave Gratuities
- Resolution 11 Agreement on Medical Assistance to Employees who are Stationed Abroad or who are on Official visit abroad
- Resolution 12 Framework for the Management of Personnel in the process of Incorporation of Teacher Education into Higher Education

2001

- Resolution 1 Amendment to Resolution 7 of 2000: Timeframes of Task Teams
- Resolution A 2001 Appeal proceedings: PSA/Western Cape Bargaining Council vs PSCBC: Case nr. J5108/00
- Resolution 2 Amendment to Constitution: Domicillium Clause
- Resolution 3 Dispute Resolution Procedures
- Resolution 4 The appointment of a Panel of Conciliators and Arbitrators (2001/2002)
- Resolution 5 Amendment to Resolution 7 of 2000 (Improvement on the Conditions of Service for Public Service Employees for 2000/2001 financial year
- Resolution 6 Amendment to Resolution 7 of 2000 and Resolution 1 of 2001
- Resolution 7 Adoption of the Public Service Job Summit framework agreement signed in Pietersburg on 31 January 2001
- Resolution 8 Policy on HIV/ AIDS training Framework in Terms of Resolution 7/2000 + Appendix B + Annexure B
- Resolution 9 Agreement on Improvement in Conditions of Service of Public Service Employees for the period 2001/2002, 2002/2003 and 2003/2004 and other matters of mutual interest

- Resolution 10 Amendment to Resolution 9 of 2001
- Resolution 11 Amendment to PSCBC Constitution: Inclusion of Dispute Resolution Procedures of Council into Constitution
- Resolution 12 Amendment to timeframes as stipulated in Resolutions 9 and 10 of 2001

2002

- Resolution 1 Amendment to timeframes as stipulated in Resolution 12 of 2001
- Resolution 2 Amendment to Resolution 1 of 2001 regarding timeframes of task teams in Resolution 7 of 2000
- Resolution 3 Amendment to Resolution 3 of 1999: State and other Housing: Clause 5 of Part XVI
- Resolution 4 Procedure in dealing with Senior Management Personnel affected by a declaration of merging of institutions by an MEC (Education) in terms of the further education and Training Act, 1998
- Resolution 5 Amendment to Resolution 9 of 2001: Framework on Scarce Skills
- Resolution 6 Annual Wage Increase and Pay progression for the 2002/2003 Financial Year
- Resolution 7 Framework Agreement: Transformation and Restructuring of the Public Service (Utilisation of Human Resources):
- Resolution 8 Interpretation of Framework Agreement: Transformation and Restructuring of the Public Service (Utilisation of Human Resources: Resolution No 7 of 2002
- Resolution 9 Foreign Service Dispensation for Officials Serving in the Republic of South Africa Missions Abroad
- Resolution 10 Skills Audit Fund
- Resolution 11 Constitution of the Public Service Co-ordinating Bargaining Council
- Resolution 12 Pensions Restructuring

Bibliography and annexures

- Resolution 13 The appointment of a Panel of Conciliators and Arbitrators (2002/2003)
- Resolution 14 Grievance Rules for the Public Service
- Resolution 15 Amendments to PSCBC Resolution 7 of 2000 and PSCBC Resolution 5 of 2001: Leave matters

2003

- Resolution 1 Amendment to Resolution 2 of 1999: Disciplinary Code and Procedures for the Public Service
- Resolution 2 Amendment to Resolution 12 of 2002
- Resolution 3 Wage Increase
- Resolution 4 Amendment to Resolution 1 of 1998 Agency Shop Agreement
- Resolution 5 Levy Agreement
- Resolution 6 Long Service Awards
- Resolution 7 Pension Agreement
- Resolution 8 Foreign Service Dispensation for officials serving in the Republic of South Africa Missions Abroad
- Resolution 9 Dis-establishment of Departmental and Provincial Bargaining Councils. Establishment of Provincial Coordinating Chambers of the PSCBC and Guidelines on establishment of Chambers of Sectoral Bargaining Councils

2004

- Resolution 1 The appointment of a Panel of Conciliators and Arbitrators (2004/2005)
- Resolution 2 Agreement on improvement in salaries and other conditions of service for the period 2004/5, 2005/6 and 2006/7.

2005

- Resolution 1 Agency Shop Agreement

Bibliography and annexures

- Resolution 2 Amendments to Resolution 9 of 2003: Annexure A: Establishment of Provincial Co-ordinating Chambers of the PSCBC
- Resolution 3 Amendment to Part XXVIII of Resolution 3 of 1999: Long Service Award
- Resolution 4 Rules for the conduct of proceedings before the Public Service Co-ordinating Bargaining Council (PSCBC)
- Resolution 5 Amendments to Annexure A of the PSCBC Constitution: Dispute Resolution Procedure
- Resolution 6 The appointment of a Panel of Conciliators and Arbitrators (2005/2006)
- Resolution 7 Pensions Restructuring: Orphan's Pension and Funeral Benefit

2006

- Resolution 1 Medical Assistance for Public Service Employees
- Resolution 2 Appointment of Panel of Conciliators and Arbitrators (2006/2007)

2007

- Resolution 1 Agreement on Improvement in Salaries and other Conditions of Service for financial years 2007/2008 to 2010/2011

Source: PSCBC 2007