

The *New* Negotiator

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ADVENT OF A NEW ERA

From the desk of the ELRC General Secretary,
Ms NO Foca

The start of 2013 marked a new era for the ELRC. The ELRC Executive Committee (EXCO) resolved to revise the strategic direction of the Council, in order to improve the core operations of the ELRC. A strong need was identified by the parties (Employer and Labour) to develop mutual understanding and resolve various organisational issues and to improve the relationship between the parties. The EXCO Lekgotla, held in December 2012, identified areas of improvement for the Council over the next three years.

One important area of proposed change is the ELRC Constitution. Changes to the ELRC Constitution is warranted by the latest developments in the education sector *inter alia* the split of the education departments into two, Higher Education & Training Laws Amendment Act 25 of 2010 and the FETC Amendment Act 3 of 2012.

The Higher Education & Training Laws Amendment Act 25 of 2010, in the main has implications for the ELRC constitution, as it gives the Minister of Higher Education and Training the powers to determine salaries and conditions of service for educators teaching at Public Education and Training Centres. Previously this was a function of the Minister for Education (Executive Authority of the ELRC), but after proclamation 44 was issued by the President in 2009, the Adult Education and Training (AET) Sector became a function of the Minister Education and Training.

This necessitated the request from the Minister of Higher Education & Training to the Council to amend its constitution to provide for two bargaining units; one for Basic Education and one for Higher Education (FET and Adult Education & Training).

The FETC Amendment Act 3 of 2012, makes provision for the lecturers who were transferred in terms of the FETC ACT 16 of 2006 from the State to the Colleges, to be migrated to the employ of State in terms of the Public Service Act 103 of 1994, which subsequently implies that their conditions of service will be dealt with in another Bargaining Council (GPSSBC), whilst those previously employed by the College prior the enactment of the FETC Act 16 of 2006, remains in the College employ and their Bargaining Council continues to be the ELRC.

Strategic direction of the ELRC (2013 TO 2015)

The following strategic goals were identified:

Strategic Goal 1: To rebuild sound relations between the parties to the Council

- Considering a relationship building exercise to improve the levels of trust between the parties so that the foundation of turning the Council around is built; and
- Clarifying roles of the parties (Council, EXCO, Staff, etc).

Strategic Goal 2: To review structures and strengthening processes of collective bargaining

- Revisiting the Scope and Structure (consider an independent chairperson) of the ELRC;
- Assess the value of Provincial Chambers and review their role;
- Amend the Constitution to bring it up to speed with the law; and
- Realization of the objectives of the organization as to enhance the promotion of labour peace.

Strategic Goal 3: To monitor, evaluate and ensure compliance to collective agreements

- Conduct an audit on the implementation of collective agreements with the organization;
- Conduct an audit on collective agreements as to establish relevancy and for purposes of review;
- Develop monitoring and evaluation framework considering Provincial structures to perform such function; and
- Develop an instrument to determine value outputs of processes and strengthen the implementation function.

Strategic Goal 4: To develop and implement a dispute prevention strategy

- Review the dispute resolution rules of the Council; and
- Develop a dispute prevention strategy that seeks to reduce disputes and manage postponements of current disputes.

Strategic Goal 5: To enhance good governance with the development and implementation of a risk management strategy, effective performance management of the organization and an investment in human capital development

- Strengthen and capacitate EXCO to clearly understand and implement its role;
- Review governance policies of the organization;
- Review the organogram of the ELRC (staffing);
- Develop a risk management strategy; and
- Develop performance measurements for the Organization.

Finalisation of PAM

The New Year commenced on a positive note for the ELRC, which bodes well with its new strategic view, to deliver more efficient services. The Council concluded its work on Personnel Administration Measures (PAM), after seven years of deliberations.

Acting in terms of section 4 of the Employment of Educators Act no 76 of 1998 (“the EEA”), the then Minister of Education determined the terms and conditions of employment of educators as set out in a consolidated schedule which was published in *Government Gazette* No 19767 of 18 February 1999. They were called the Personnel Administration Measures (“PAM”).

PAM addressed the following areas:

- Scope of applicability of PAM, norms and guidelines for the purposes of establishment determination; workload of educators (school based), duties and responsibilities of educators, and rank designations of educators;
- Relative education qualification value (“REQV”), appointments in education, the advertising and filling of educator posts, determination of salaries, rank codes for Persal purposes and rank codes in respect of post levels and REQV;
- Development appraisal;
- Allowances, measures in connection with educators who are paid per hour and educators who perform overtime duties;
- Public examinations;
- Service benefit awards, departmental specific awards, and retirement packages;
- Time off and secondment;
- Grievance procedure; and
- Measures prescribed by legislation and not administered by the Minister.

Since the promulgation of PAM in 1999, it has been amended on several occasions, the last being in 2003.

From time to time collective agreements have been concluded within the ELRC, which have a direct bearing on the terms and conditions of the employment of educators. To a lesser extent, there have also been similarly relevant resolutions in the Public Service Coordinating Bargaining Council (PSCBC). However, these agreements

and resolutions have as yet not been incorporated in the currently published version of PAM, which has not been amended or updated since 2003. This has resulted in the problematic situation that educators and departmental officials alike frequently have a PAM version, which may be both incomplete, and inaccurate in respect of the matter they are then dealing with. The same difficulty may pertain to the proper resolution of disputes, which involve the interpretation, and application of one or other provision of such PAM in the sense that a dispute may be determined by way of reference to a provision, which is no longer current.

In order to address this, the ELRC constituted a Task Team to update PAM with all the pertinent agreements, regulations and resolutions so as to bring about a single and reliable source of reference for all conditions of service applicable to educators. It also formed part of the Task Team's assignment to seek to make PAM more user-friendly and accessible in terms of its structure and language usage.

The Task Team finalised its work and prepared an updated and restructured PAM comprising nine chapters. The PAM document will be published by the end of the first quarter, ending June 2013. This document will outline how PAM will affect policy matters and HR matters for educators.

This new road map for the Council will steer it in a positive direction and the proposed changes can only yield desired results with the support of the ELRC staff, Council members and key role-players in public education.

FETC COLLECTIVE AGREEMENTS

By Bernice Loxton

A bargaining unit was launched within the ELRC to cater for FETC (Further Education and Training Colleges) lecturers in terms of section 54 of the FET Act. The launch took place on the 9th of June 2009.

The parties to the FETC bargaining unit are the FETCEO (Further Education and Training College Employer Organisation), and the combined trade unions: CTU-SADTU and CTU-ATU.

The launch of the FETC Bargaining Unit was a tremendous feat for the industry that marked the start of developments in collective bargaining in the FET sector, providing college lecturers full labour rights and an established structure that allows them to exercise their rights and bargain for improved work conditions.

A number of significant collective agreements have been concluded since the formation of the unit in 2009. The FETCBU realised its good in 2013 to affect change in the sector through the conclusion of agreements that will ensure change in the sector. The FETCBU concluded four collective agreements in February 2013. These are:

1. Collective Agreement 1 of 2013

Generic contract of employment for post level 1 lecturers appointed in the public further education and training colleges.

The purpose of the agreement is to provide for a generic contract of employment for post level one lecturers that are appointed by public Further Education and Training Colleges.

The parties to Council noted that FET Colleges developed their own contracts of employment resulting in differentiated conditions of employment and remuneration packages between colleges. This implies that countrywide lecturers, who are doing the same work, are appointed in terms of contracts of employment and different conditions of service.

Many FET Colleges have three categories of contracts of employment:

- A contract of employment for formerly state-employed lecturers who were transferred to the employ of colleges;
- A contract of employment (letter of employment) for lecturers appointed after 1 January 2008, but reimbursed by Persal; and
- A contract for lecturers remunerated by the college Council.

There is a need to standardize the contracts of employment offered to post level 1 Lecturers in the FET Colleges sector. Collective Agreement 1 of 2013 will ensure that there is only one generic

contract of employment for Lecturers in Public Education.

2. Collective Agreement 2 of 2013

Permanent appointment of serving temporary and contract lecturers who have been in the employ of further education and training colleges for a period of 12 months or longer.

Parties to Council noted that there is a need to effect the permanent appointment of temporary and contract lecturers who have been employed in the College establishment for a period of 12 months or more on a continuous basis in an effort to promote security of employment for lecturers.

Such lecturers provide invaluable service to the employer in delivering curriculum.

The purpose of Collective Agreement 2 of 2013 is to effect, within the approved post establishment of the Colleges, the permanent appointment of serving temporary and contract lecturers who have been employed in the College establishment for a period of 12 months or more on a continuous basis.

Continuous service shall mean the current unbroken or broken service within the College as a lecturer provided that, any broken service was of 120 calendar days or less.

3. Collective Agreement 3 of 2013

Establishing parity between conditions of service (benefits) of College appointed lecturers in public further education training colleges with those employed in the public service.

The Parties to Council noted that some College lecturers are currently remunerated from college payroll (and not from Persal) and in most instances do not receive the same benefits as received by employees of the State.

Lecturers previously employed by the State were transferred to the employ of public FET colleges with effect from 1 January 2008 with retention of their existing conditions of service.

In signing the Collective Agreement No. 1 of 2010, parties committed themselves to finalise all matters relating to conditions of service as a

second phase via negotiations in the ELRC FETCBU.

The purpose of this agreement is to establish parity in the conditions of service (i.e. benefits) for lecturers employed at Public Further Education and Training Colleges with those in the public service.

Collective Agreement 3 of 2013 provides for the following:

- The conditions of service (benefits) that are currently applicable to persons employed by the State under the Public Service Act shall apply to all lecturers.
- A 37% in lieu of benefits shall be paid to lecturers who are employed for six months or less.
- All employees employed for six months or longer shall receive his/her basic salary plus benefits or his/her basic salary plus 37% in lieu of benefits.
- No legitimately employed lecturer shall receive benefits that are less favourable than what he/she received on the date of signing this collective agreement.
- This is a transitional matter until staff is transferred and thereafter the resolution will only be applicable to lecturers remaining with the college council.

4. Collective Agreement 4 of 2013

Policy on recruitment and selection for lecturing staff in the public further education and training colleges.

The purpose of this agreement is to provide the framework and guidelines for appointing skilled and competent college lecturers.

All aspects of the recruitment and selection process will be non-discriminatory and will afford applicants equal opportunity to compete for a position.

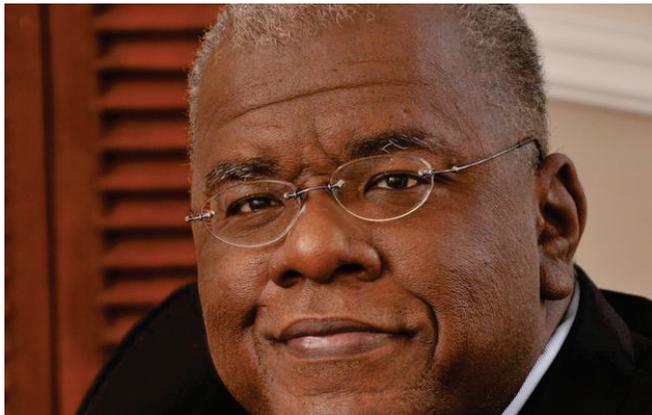
This agreement applies to all lecturers as defined in terms of further education and training act 16 of 2006, whether such employees are members of trade union parties to this agreement or not.

Management staff who are appointed in terms of the provisions as contained in the FET Colleges Act 16 of 2006 are excluded from this agreement.

The parties to Council note that Colleges currently utilize varied and different recruitment and selection policies to appoint staff. It is envisaged that colleges should use uniform recruitment and selection policy in order to enhance consistency and stability within the public FET Colleges sector.

The four agreements concluded in 2013 provide uniformity in the FETC sector. The implementation of these agreements will bring about a greater sense of contentment amongst college lecturers, as the agreements addresses pertinent areas such as employment contracts, permanent employment, equal benefits for college lecturers and a concrete policy on the recruitment and selection of lecturing staff.

STRIKE A CAREFUL BALANCE



By Prof Jonathan Jansen

Teachers should retain the right to strike. The reported efforts by the ruling party to push for education as "an essential service" might seem, on the face of it, to be a good idea but, if implemented, could further erode the democratic rights available to working citizens.

This is, after all, the party of the secrecy bills and the toxic new higher education laws, which threaten to asphyxiate individuals, and institutions alike by depriving them of the democratic air that our society needs to breathe the promise of freedom.

These attempts to wield power recklessly and to control on the basis of electoral majorities constitute a much graver danger to the country.

My gut, of course, tells me that government should clamp down on teacher strikes, given the enormous damage done to the education of young children. The protracted strikes in the Eastern Cape, for example, explain in large part the persistently low scores of learners in primary schools (the ANA, or annual national assessments data) and in high schools (the NSC, or national senior certificate results).

While the Bill of Rights guarantees the right of workers to strike, the constitution also holds that "[a] child's best interest is of paramount importance in every matter concerning the child".

Given that the overwhelming majority of our children come from poor families, it makes sense that this one route out of poverty - a good education - should not be blocked because of strikes by educators whose children tend to be placed in middle-class schools, where there are little to no strike actions in any year.

But think again. Imagine you are a teacher in the Eastern Cape, one of the more devoted educators, and you show up day after day teaching your eight or nine classes without fail, only to find at the end of the month that you are not paid because of administrative chaos in Bhisho.

You write letters and receive no reply. You stand in long queues at the district and head offices, only to be told they cannot find your file.

Imagine there are hundreds or even a few thousand of you. The next month comes, and the next, and still no salary cheque. Debt collectors threaten you. But still you show up daily to teach every class with energy and enthusiasm.

You borrow money for petrol or taxi fare just to get you to school. It is embarrassing because teaching is supposed to be a proud profession. Then one day you realise the only way to get the attention of your employers is to withhold the only thing you have left to bargain with - your labour.

There are many variations on this theme of distress among good teachers. There are the Grade 1 classes with more than 100 children in a class and whole grades missing textbooks, as we

saw last year.

I exclude the sizeable number of thugs who parade as teachers and those who do not teach, even on the days when there is no strike at all. My attention, for now, is on the good teachers who struggle to do their work and whose complaints are not heard by the officious, cold-hearted brutes in some of the provincial education departments.

In other words, clamping down on teacher strikes would, consequentially, protect incompetence in those provincial education departments who treat their hardworking educators with contempt.

Rather than take away the constitutional right of an employee to strike, we should be talking about the conditions under which strike action should be undertaken.

South Africa's problem is not strikes; it is the lack of constraint and the destruction of lives, property and reputations that inevitably flow from the ways in which strikes are conducted.

Strikes should be a last resort following clear evidence of inaction on the part of the government. Strikes should be limited to a set number of days, and preferably outside of normal instructional time.

Strikes that affect actual teaching and learning time should be made up immediately so the learner is not disadvantaged. Strikes that are violent and destructive must lead to action against renegade teachers, including expulsion from the profession.

Strikes should under no circumstances lead to intimidation of those who, on the basis of conscience, choose to continue teaching. And strike participants must not be allowed to disrupt the schools of the poor if their own children are ensconced in non-striking schools; that is unfair.

Permission to publish this article was granted by The Times.

MARIKANA – IMPLICATIONS FOR COLLECTIVE BARGAINING

By Bernice Loxton



The month of August 2012 will go down in history as the month with the most dramatic events in labour relations since the Wiehahn Commission in 1978.

These events were dominated by the Marikana tragedy. As a nation, we all bowed our heads in memory of all those who lost their lives or were injured in the events surrounding Marikana.

This sad event shocked the world and stirred the debate on the role of trade unions in the country. Some critics strongly feel that such a catastrophic incident could have been prevented by more responsible trade unionism. The Marikana incident has also raised questions of whether this event marks the 'rise' or 'fall' of trade unions in South Africa. Historically in South Africa, trade unions' function was primarily political as organised labour was instrumental in advocating for democracy.

Rutendo Dhlwayo (2012) writes that trade unions now have a broader role to play in

national development over and above protecting workers' rights and improving their economic status. He is of the view that trade unions should promote social change and justice, harmonious industrial relations and encourage human resource development.

Trade unions play a leading role in civil society, which includes keeping the Government in check on matters affecting the general public.

Disputes should be settled efficiently and effectively to avoid conflicts and industrial action that would have adverse economic consequences. Trade unions should ensure workers' demands are justifiable and within reason and also that workers' rights are not infringed in any way. Changes in working conditions and wages should be sustainable and should not be a financial burden to business. At the same time, trade unions should acknowledge that there is an inherent conflict of interest between labour and capital that can never be completely eroded; workers want higher wages and owners higher profits. It is the role of trade unions to facilitate a balanced consensus for parties involved.

South Africa has an education system that has been heavily criticised for being below standards and a lack of skills development. In the 2012/2013 Global Competitiveness Report by the World Economic Forum, South Africa was ranked 140 out of 144 countries in the quality of educational system category. This has resulted in the creation of a large uncompetitive labour force that becomes structurally unemployed. (Dhliwayo, 2012)

Marikana will without a shadow of doubt, profoundly influence labour relations in South Africa. Majoritarianism and strong trade unions, which have been the bedrock of the current labour relations system, has been left hugely exposed. The Labour Portfolio Committee is expected to drop the provisions for the proper holding of pre-strike ballots and the forfeiture of protected strikes where violence, etc. prevails. These amendments

must be retained in order to promote orderly collective bargaining and industrial democracy. (Lexis Nexis, 2012)

The events associated with Marikana have renewed pressure from specific quarters for decentralised bargaining. This is in direct contrast to calls for centralisation by COSATU, NUM and the Department of Labour. (COSATU, 2012)

A Reporter for Business Day, Paul Vecchiatto (August, 2012) writes that MPs will deliberate on a number of proposed amendments to the country's labour laws. Prof Benjamin, answering for the Labour Department, said the commitment to majoritarianism was not absolute, in terms of the Labour Relations Act, and "a lot of the problems that have emerged is in the employer's practice and not in law." Loane Sharp, Labour Economist at Adcorp, said he thought legislation would change to be more favourable to management. "The Marikana massacre has had a profound impact on the ANC's psyche. The international humiliation the ANC suffered and the huge contradiction that labour relations are more tense than ever in post-apartheid South Africa."

Fin24 reported in January 2013 that proposed changes to the South African Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA) are on the cards for 2013 in the wake of massive protest action that has crippled the country.

"Some of the proposed changes include the fact that minimum wages can be prescribed by the Minister of Labour. Public officials are also proposed to have the power to prohibit strikes in their sectors.

"It is also proposed that unions must ballot and get majority agreement to strike or picket, but there is strong opposition from COSATU who see this as a curtailment of their freedom to strike and one wonders whether this will be in the final legislation," said Rob Cooper, Director of Legislation at Softline VIP.

The legislative changes following Marikana, will unveil the implications for the ELRC, and particularly the influence on the Council's bargaining function.

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Editor: Ms NO Foca

Tel: 012 663 0432

FAX: 012 663 9604

E-mail: CindyFoca@elrc.co.za

Editor, Layout and Design: Bernice Loxton

Tel: (012) 663 0442

Fax: (012) 663 9604

E-mail: media.pro@elrc.co.za