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TRENDS IN COLLECTIVE BARGAINING IN A POST-INDEPENDENCE NAMIBIAN PUBLIC SECTOR

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A MINI DISSERTATION, SUBMITTED TO
THE SCHOOL OF GOVERNMENT,
FACULTY OF ECONOMICS AND MANAGEMENT SCIENCE,
UNIVERSITY OF THE WESTERN CAPE,
IN PARTIAL FULFILMENT OF THE REQUIREMENT
FOR THE DEGREE OF MASTER OF ADMINISTRATION

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MARCH, 1997



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ACKNOWLEDGEMENTS

I should like express my gratitude to the following people for their valued contribution to this dissertation:

Dr Evance R. Kalula, my supervisor, for his interest, guidance, knowledge and support throughout the course of this dissertation.

Special thanks to Karen Campell for proof reading.

This work is dedicated to my parents for support and motivation to finish this study and also to my daughter, Impie.

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Declaration

I declare that this Mini Dissertation Thesis is my own, unaided work. It is being submitted for the Degree of Master of Administration at the University of the Western Cape.

I further testify that it has not been submitted for any other degree or at any other University, or institution of Higher Learning.

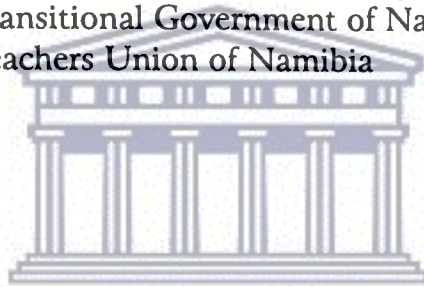
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Abbreviations

AATO	-	All African Teachers Organisation
GSSA	-	Government Service Staff Association
ICFTU	-	International Confederation of Free Trade Unions
ILO	-	International Labour Organisations
NAPWU	-	Namibia Public Workers Union
NANTU	-	Namibia National Teachers Union
NAWU	-	Namibia Workers Union
NUNW	-	National Union of Namibian Workers
PSUN	-	Public Service Union of Namibia
SATO	-	Southern Africa Teachers Organisation
SWA	-	South West Africa
SWACOL	-	South West African Confederation of Labour
SWAMSA	-	South West African Municipal Association
SWAPO	-	South West Africa People Organisation
TGNU	-	Transitional Government of National Unity
TUN	-	Teachers Union of Namibia



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ABSTRACT

The emergence of collective bargaining in the public sector is viewed as a product of economic, political, technological and social dynamics regulating the economic relationship between the government as employer and public sector employees. Although public sector employees have been denied the right to organize themselves and to bargain collectively with their respective governments, especially in many African countries, the profound changes during the recent years has dramatically changed labour relations in the public sector. In many African countries, particularly English speaking countries, the process of collective bargaining between the government and public sector employees has gained prominence as the struggle to reconcile the broad interest of the government and its employees has been waged in order to deal effectively with public employment issues.

Namibia is one of the many English speaking African countries which is making tremendous efforts to harmonize the employment relationship between the government and the public servants. But these efforts are being hampered by the structural handicaps emanating from the historical legacy of apartheid and its adjunct- authoritarianism (which has found firm roots in the country even after five years of independence). The aftermath of political upheavals which almost completely destabilised the social fabric of the civil society has created an uneasy relationship between the government and the cluster of public sector employees organizations in the determination of the public sector conditions of employment. Although the Namibia public service employees enjoy the right to associate and to bargain collectively as enshrined in the Namibia Constitution, the relationship remains skewed with the government enjoying a stronger bargaining power than public servants' representative bodies - trade unions and staff associations.

This study will therefore analyse the historical factors that have affected organized labour in the public sector together with the development of legislation which regulates public sector labour relations. The study will explore the macro- political impediments which neutralize the organized labour's inability to influence the government decisions on issues pertaining to conditions of employment in the public sector. Balancing the power in collective bargaining is largely of interest to well-organized labour in the public sector. To achieve this, Namibian public sector trade unions have to overcome the political and socio-economic obstacles of the past and persuade the government to create a conducive public sector labour relations climate.

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Chapter 1

Introductory

1. Introduction

Government efforts to balance the power of, and to harmonize the collective bargaining process in the public sector has sometimes proved futile, especially in third world countries. Although it is well understood that collective bargaining is a joint decision-making process where employees and employers' representatives meet in order to negotiate and arrive at agreements on issues pertaining to their relationship that are binding upon them, it is always problematic when it comes to its application within the public sector.

It is also well understood by the governments that without a proper and effective system of collective bargaining, the labour relations environment is always vulnerable to industrial conflict. Despite such understanding that exists between labour and governments, states always cling to the idea of government's sovereign power in resolution of employees matters related to determining the condition of service.

The rights of public employees to bargain collectively, where recognized, has therefore always operated under various constraints such political intolerance,

rivalries and the structural handicap of unorganised labour.

The basic important role of the state as a regulator of the industrial system has been compromised the state's role as an employer. The two roles are often difficult to reconcile.

The state's role as employer, having to negotiate the conditions of service for its public employees is in conflict with the doctrine of sovereignty which claims to represent the public interest (Baderscheider, et al. 1983).

To promote the interest of a certain segment of the society (public sector employees) would tend to override the state's primary responsibility to protect the public interest. However, given the fact that the state has become the largest employer in most third world countries, and the fundamental right of the employees to bargain collectively has taken root among the public employees, the pressure on the state to engage in the process of collective bargaining and to seek consensual approaches to decisions on terms and conditions of employment has increased.

So, the issue of collective bargaining in the public sector must be analysed within the overall framework of labour relations. It should be examined (for industrial relations purposes) within the ambit of the employees rights,

especially the right to organise. It is contended that governments should recognize the right of public employees to organise themselves into employee organizations. However it is that in most cases certain restrictions are necessary on this fundamental right. Governments claim that it is necessary to put some limitations in order to protect the *esprit de corps* among the public employees and to encourage the allegiance owed to the corps to which they belong. (Yemin, 1993).

It is therefore important to consider whether the right to organize where it is granted gives rise to the right to bargain collectively. To what extent does the right to bargain collectively, influence and change the public service labour relations? How has the development of effective collective bargaining in the public service taken place and what role has organized labour played in shaping the nature of public service, especially in the third world countries? All these issues are important to the analysis of collective bargaining in the public sector.

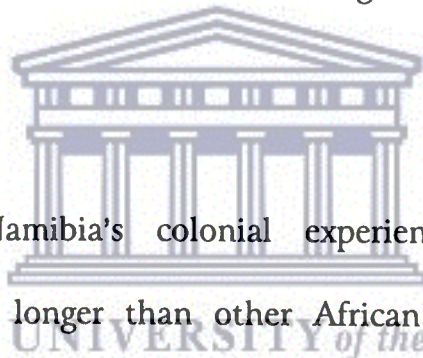
In Namibia, a third world country, the history of collective bargaining is a product of colonialism, and the struggle for a better living conditions. It has been nurtured by politics of resistance on one hand and the state's gradual recognition of the employee's right to organize themselves on the other. It

means that during the colonial period, collective bargaining in the public sector was non-existent and in most cases the state found it difficult to generally maintain the industrial peace.

On the other hand, the history of organised labour movements is a direct response to the state oppression. Workers have been organized in tandem with political organization to counter state oppression at the workplace. The trade union, as a whole, has a history of participation in the politics of resistance. Trade unionists have assumed political leadership. Although organised labour emerged during the hectic days of state oppression, its ranks were relatively, in small numbers, and tended to be too weak to engage in negotiations for better working environment and to change the industrial order. On account of continuing apartheid practices at the workplaces, employee's organizations did not succeed in fully developing a clear socio-economic and industrial vision to promote the living and working conditions and to eliminate unfair labour practices which continue at the workplace.

To take a holistic approach, one cannot ignore the fact that labour relations in Namibia are still a direct result of and are affected by of a historic process of conflict, negotiations and compromise. This can be substantiated by the current nature of the relationship between employees and employers.

As mentioned before, the Namibian situation lacks coherent organised labour relations. It did not result from the process of industrialisation, but by the structurally discriminating colonial society (Melber, 1993). It is past social relations and structure of power of the colonial society which compelled the workers to engage in a struggle not only in labour matters, but in the overall struggle for emancipation from colonial bondage. Organised labour, especially trade unions, were seen as part of and elements of forces of struggle for independence and the worker's interests were regarded as part and parcel of the civil society.



Given the fact that Namibia's colonial experience and struggle for independence took much longer than other African states, the legacy of apartheid continues haunt much of the trade union movement in post-independent Namibia. The politics of "divide and rule" continue to affect the process of negotiating terms and conditions of employment.

Trade unionists ability to engage themselves in negotiation with the employers for improved working conditions tends to be limited because of past experience. They continue to lack, as they did in the past, the ability to defend workers' interests. For the most part, organised labour in Namibia

subjected to seriously lacks organizational and managerial capacity. This major structural handicaps is compounded by the high degree of unemployment and low skills of the work force.

Although the Namibian government seeks a pluralistic approach to industrial relations with the aim of developing collective bargaining, it seems that the trade unions in the public sector are far from benefitting from these aims in practice.

The relationship between the state as an employer and public sector employees remains skewed and conflict ridden with trade unions in a weak bargaining position. The state has prescribed minimum standards as a basis on which employers and trade unions can bargain collectively, but this again, depends on the strength of the employer and the capacity of the trade unions. Most of trade unions were marginalised during the colonial era, and most of their leaders have suffered in the hands of colonial government. So, their skills of negotiation are therefore insufficient to influence the bargaining process and enable their members to benefit.

Even procedural issues tend to be difficult to agree on. For example, it has recently taken a long time for the government to recognise only one trade

union as an exclusive bargaining agent. This can be attributed to the existing labour law on collective bargaining which makes it almost impossible for a trade union which is already torn apart by political and socio-economic differences of the past, to attain the representativity required by law to be recognised as an exclusive bargaining agent. Whether this move is a covert measure by the state to control the power of the trade unions is debatable.

It is apparent that there is a strong resentment amongst public sector trade unions that there is a little effort, if any, from the state to strengthen the trade unions, and its declared pluralistic approach seems to be more symbolic than real. Furthermore, trade unions claim that the state negotiates in bad faith and they instinctively anticipate overt confrontation, especially in matters related to efficiency in the public service. The major concern with collective bargaining in the public sector is the problem of maintaining a balance between the interests of public servants and the general public. This is so because the state as employer is expected to naturally promote equitable conditions of service and salaries for employees. However it is perceived that this should not be at the expense of the citizenry, who happen to be both taxpayers and whose interests the state is supposed to protect.

Normally, collective bargaining is characterised by a attempt by parties in the

employment relationship to reach compromise on various issues in the workplace. The aim therefore, is for the parties to develop a strategy for regulating what is perceived as inherent conflict caused by their differing perceptions of social, political and economic issues. Employment matters are therefore, not excluded in this regard.

2. The aim of the study

The study will initially examine and review the nature of organizational and political factors that inhibit the ability of both social partners, that is to say trade unions and employers, in collective bargaining, and therefore prevent cooperation . Given the status of Namibia as a least developing country, its situation will be analysed within the context of trends in third world countries' labour relations.

Again, given the historical factors affecting labour relations in Namibia, which is characterised by a highly politicised trade union movement and which seems to be incapable of bargaining effectively in the public sector, the study will make an in depth analysis of the origin of trade union ailments and how these have influenced on bargaining power, structures and outcomes. As mentioned earlier the aim is to unveil the macro-political environment in which trade

unions in the public sector operate and the limitation to their bargaining power. The study will also evaluate the bargaining structures, the conflicting values of self-determination which favour decentralisation of bargaining structures and the tendency of the state to centralise structures for the sake of economic rationality and stability.

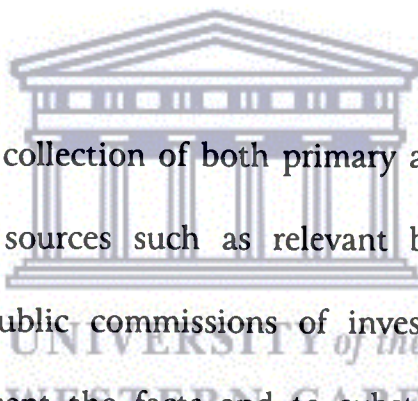
3. Assumption

The underlying assumption which the study based is on the need to democratise of public institutions. It is apparent that in Namibia, trade unions' capability to organize themselves with a coherent approach to labour relations tends to be weak. This can be attributed to the fact that most of the public sector trade unions are not accustomed to dealing with labour matters exclusively that is to say confining themselves to issues which secure their members' economic interest through collective bargaining.

In spite of the fact trade unions strive to defend the rights of the working people, they are confronted by the political realities which restrict and jeopardize their ability to bargain and realize their aspirations. Political, socio-economic and cultural differences of the past still haunt trade unions and affect their perception and operations.

4. Methodology

The study has used the qualitative method widely regarded as a viable methods of investigation and analysis. It is a case study of the emerging labour relations in the Namibian public sector which review and evaluate the literature during pre- and post- independence periods and analyse the theoretical framework which underpins labour relations. The study is both historical and comparative.



The study is based on the collection of both primary and secondary data. It means that documentary sources such as relevant books, articles, official publications, reports of public commissions of investigations and seminar papers are utilized to present the facts and to substantiate the arguments. Interviews, and observations from the stakeholders, interest groups and individuals have played a significant role in validating the study. Interviews are used to back up recent events and arguments, because of little documentary evidence for what is being described, for example the current debate on whether or not to create a separate legal regime to the public sector labour relations.

Although the study is open to a number of criticisms such as questions of reliability and validity and types of information given, some attention has been given to the need to safeguard the data from distortion and influence of bias.

5 .The importance of the study

The existing literature in Namibia on labour relation in general tends to be relatively too scanty to help the understanding of the state and civil society. Although some efforts have been made to research relevant topics such as trade union's and labour, a lot more needs to be done on this subject of collective bargaining and labour system and its socio-economic consequences. Where organised labour has been dealt with studies are specifically concerned with class situation and the role of labour in the resistance to colonialism and capitalism. (Katjavivi, 1988).

This study therefore seek to broaden the study of labour to public sector labour relations in Namibia. It seeks to engage on the stakeholders and interest groups in the Namibia'a public sector labour relations thus highlighting issues in the policy debate and also contributing to the literature in this field.

6. Structure of the study

The organizational structure of the study is as follows:

Chapter Two presents with the theoretical framework of to labour relations in the public sector and the development of collective bargaining in the public service in the third world countries, with particular reference to English speaking African countries. More importantly, it reviews literature on labour relations on a comparative basis.

Chapter Three reviews the origins of labour relations in the Namibian public sector and the macro-political and economical factors which affect the public sector labour relations environment. Major emphasis is being place on the analysis of the historical experiences and changes affecting collective bargaining in the public sector. The chapter also considers the nature of the public service and public service unionism.

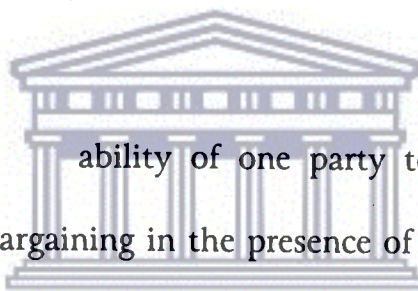
Chapter Four documents the statutory provisions which regulate the public sector and their effect on bargaining power. It also examine whether or not the Namibian situation, in particular its laws are in conformity with the International Labour Organizations's standards. It also examines the current debate on whether or not the public sector should be exempted from the

labour law regulating private sector. More importantly, it addresses structural issues and looks at constraints on public sector collective bargaining, particularly organized labour's capacity to represent its interests.

Chapter Five concludes with a set of recommendations for possible strategies on collective bargaining which would be most appropriate to the Namibian public sector labour relations.

7. Definitions of the key terms

Bargaining power:



ability of one party to achieve its goals in bargaining in the presence of opposition by another party to the process. Ability to compel one party to seek an agreement by circumstances to settle the dispute, by strike leverage each party holds.
(Kochan ,1988: p 88).

Bargaining parties:

in most simple form, means the employer - representative team and the employee - representative. Sometimes refer to negotiating team.
(Ford 1993: p 57)

Bargaining unit: refers to a clearly defined group of employees who by virtue of their common position are recognised as a constituency for trade union organization and collective representation. In other words, it refers to a domain to which a collective agreement applies, for example to a certain division within the organisation or an entire organization.

(Ford 1993: 57).

Bargaining structure: refers to the scope employees and employers covered or affected by the collective bargaining agreement. It includes the level at which bargaining takes place, and also the coverage of bargaining, for example, a section of the workforce or all workers in an organisation. (Kochan, 1988: 12)

Collective bargaining: as a voluntary process of reconciling the conflicting interests and aspirations of management and labour through the joint regulation of terms and conditions of employment (Ford, 1993: 56)

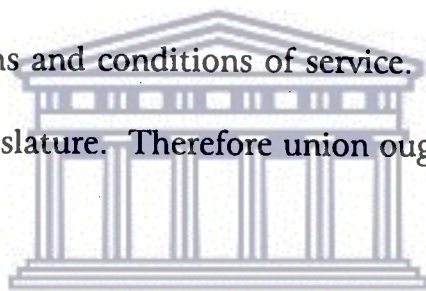
Public sector/ service: generally referred to government size in an individual country, determined through compensation of employees or government consumption expenditure and employment. (Beaumont, 1992: 8)

Chapter II

Theoretical overview on public sector collective bargaining

I. Introduction

The other supporting purporting to take account of political realities within public sector bargaining is the mandate of law which attached to the determination of the conditions of employment. By most government's institutional structures any changes in the law which govern terms and conditions of employment, require the attention of the legislative bodies to alter or modify them. Public managers cannot embark on or enter into bilateral agreements with public employee unions to change the law which regulates terms and conditions of service. Public managers have to seek a mandate from the legislature. Therefore union ought direct their grievances to the legislative.



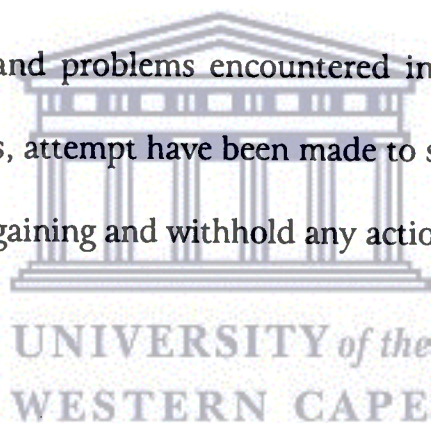
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Stahls (1976) further argues that the diffusion of authority in government makes it even more impractical to deal with the organized bargaining efficiency than in the private sector. The use of power within the structures of government is subject to the checks and balances principle in order to prevent the over concentration of power in one particular structure. Any collective bargaining issue is subjected to this procedure, although it is dealt with on its own merit. The pay determination cannot be dealt with in the same manner as other issues such as working environment or training programmes. It means that bargaining structures are determined to deal specifically with certain issues. Also, these issues are distributed to appropriate

structures according to their effect on other groups or on the public at large.

So, by nature the collective bargaining process itself is governed as much by politics as by economics. The public management stance is being influenced by the variety of pressure groups and economic conditions. When it comes to wage negotiations, the process becomes more problematic and sometimes goes to the extent drawing the attention of the public.

So, despite the differences and problems encountered in public sector collective bargaining, in many occasions, attempt have been made to support the development of public sector collective bargaining and withhold any actions which can retard such development.



Cayer (1986) emphasis that because of the complexity of the government, bargaining requires more compromises and governments generally fail to relinquish their power position to their employees.

So, collective bargaining in the public sector faces the fundamental problem of the perpetual conflict over whether public policy should prescribe a different framework for bargaining or should operate over within the same legal framework as the private sector. Regardless of conclusions drawn in the debate, it is clear that the nature

practice and parameters in the public sector differ from those in the private sector.

But to argue that collective bargaining is inappropriate for the public sector, is a denial of the public sector employees' inherent right to participate in the determination of their working conditions.

2. Comparative overview

It has been observed that the labour relations in the public sector in less industrialised countries lag behind in contrast to the industrialised countries. Until recently it was felt that the standard labour relations were only appropriate to industrialised countries. Even now, most governments in developing countries in Asia and Africa have not devised ways and means of harmonising the relationship with their public sector employees. To most third world countries, it is to regulate public sector labour relations effectively and satisfy the requirements of the fundamental principle of freedom of association, the right of the employees to organize themselves. These countries are now seeking to review their public service labour relations that is to say they are in the process of devising way of regulating the methods and procedures of interaction for the determination of terms and conditions of employment, criteria for public sector pay determination and labour conflict resolution. (Yenin, 1994)

Most of the third world countries who are members of the International Labour Organisation (ILO) are bound to observe international labour standards, particularly when they ratify the conventions which entrench rights of employees. These include the Freedom of Association and Protection of the Right of Organize Convention, 1948 (no. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (no. 98). Most third world countries find it inappropriate to extend these rights to public sector employees.

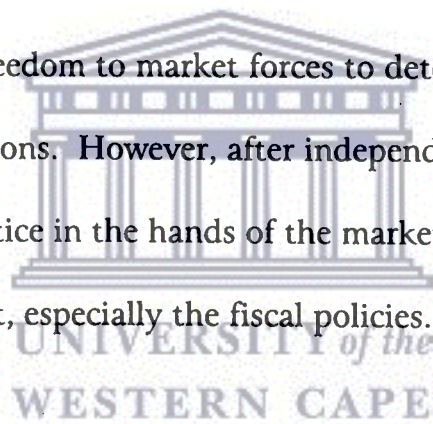
For most of these governments, the duty to recognize the right of public sector employees, to organize themselves and to be a partner in determining the terms and conditions of employment and as partners in the making of policies on labour relations for the whole economy is a new role. Government's traditional role of regulating the national economic policy within the framework of national politics tends to be in conflict with the extension of rights of collective bargaining to the public sector. Most third world countries therefore find it difficult to reconcile these duties and roles.

3. African experience

It should be stressed again that collective bargaining is a process of joint problem-solving, a mechanism aimed at enhancing understanding between employers and employees in labour relations. Some African governments fail to understand that

collective bargaining is an instrument used by employees, employers and the government to strengthen and regulate labour-management relations and to develop a sound and constructive labour system. (Abdel-Rahman, 1988).

The ILO (1988) found that in most African countries, systems of collective bargaining resemble those of the former colonial powers, particular systems of the English-speaking countries. Collective bargaining was taken as a matter between social partners to negotiate for better wages and working conditions freely, while the national labour laws established minimum standards on labour practice. Most of the colonial power have given freedom to market forces to determine the level of interaction within industrial relations. However, after independence, most governments felt that to leave labour practice in the hands of the market forces could distort the intentions of the government, especially the fiscal policies.



Consequently, most governments gave priority to national economic development and self-reliance. This paved the way for a more controlled labour practice in which more employment conditions were guided by the statutory provisions. It was felt the organized labour force might influence the agenda in a way that could sabotage the aspirations of the government.

In its findings, the ILO (1988) has cited Ethiopia and Tanzania, where collective bargaining has been directed to feed the notions of building the nation along socialist

lines on the other hand. In countries with mixed economies, such as Botswana and Kenya, governments place a watchful eye on market forces and bargaining restrictions on certain issues such as wages. Galin (1994) found that African countries, who witness the political transformation of collective bargaining, tend to take a different picture. The process of transformation from non-democratic dispensation to democracies tends to change the status of organized labour and the government. During the non-democratic era, the government dominated the labour relations practice and thus controlled the actions and the aspirations of trade unions. The employees tended to organize themselves in line with political issues and jump onto the political wagon to stimulate the transition to democracy.

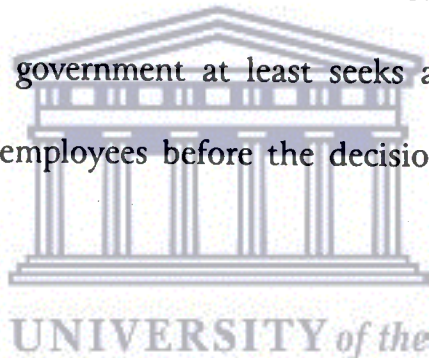
But after the political transformation which overhauled the overall industrial relation process, organised labour found itself in the awkward position of being unable to organise itself so as to achieve its economic goals. Sometimes trade unions in these countries suffered a setback in their status because of the democratic environment which allowed a free trade unionism and genuine collective bargaining.

4. Methods of determining the terms and conditions of employment in the public service

The general trend for the determination of the terms of conditions of service in public service has indicated a transformation from unilateral decision-making to a more

consensual approach. This has been attributed to the pressure from militant public sector employee organizations waged against the public sector as an employer, and to some extent to the demise of the concept of government as a sovereign employer brought about by the acceptance and recognition of the rights and freedoms of the public employees. (Yemin, 1994).

To this effect, unilateral decisions have largely disappeared in the industrialised countries, in contrast with less industrialised countries. Even where the process of unilateral decision exist, the government at least seeks a consultation with the representative of the public employees before the decisions are taken. (Yemin, 1994).



The move to a more fully fledged bilateral decision can also be attributed to the ILO convention for the promotion “of impartial machinery such as mediation, conciliation and arbitration” to be extended to the public service employees in order to determine their labour matters. (ILO - Convention no 151, 1978) This is applicable to member countries, in obligatory form, to ratify such conventions in way which would make them use standardized methods of negotiation. It has even largely contributed to the development of the method of determining the terms and conditions of employment from a consensual approach to more formally organised collective bargaining in the public sector.

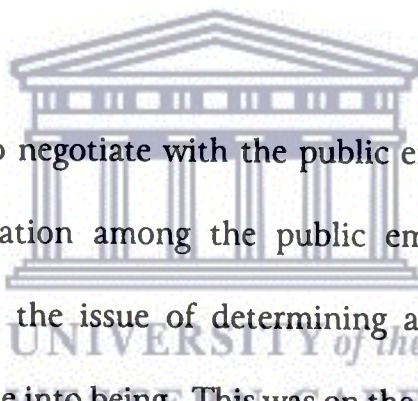
Although not all governments have indulged themselves in legal collective bargaining, as in some Asian and a number of African countries, ILO member countries have established, a formalise joint consultative machinery with the public employee organizations.

5. The quest for recognition

It is now accepted that in most African countries, labour decisions which give to the rise of determination of terms and conditions of public sector employees are the result of some form of collective bargaining. The issue of recognizing the public employee sector union, and adhering systematically to a fully fledged collective bargaining process, is the product of two positions. Firstly, some governments have agreed to negotiate with employees, because they cannot afford disruptive labour unrest. Labour unrest has a detrimental effect, especially for the government which seeks to control the public sector trade unions for the sake of economic growth. (ILO, 1989).

Secondly, some governments have been influenced by the notion of projecting a good image to its employees and so being perceived by the public as a “moderate employer” in order to create a favourable situation and stable labour relations. (Beaumont, 1992). Whatever position is more influential, the thrust of the matter

is that most governments do institutionalize collective bargaining to many categories of public employees. But, the more important question is to what extent governments recognize the public sector employee organizations for the purposes of collective bargaining. Furthermore, if recognized, do these public employee organizations have any legal status to draw the government to the negotiating table. Again, Yemen, (1994) observed that many countries (especially the developing countries), do recognize the legal existence of public employee organisations, but their powers are curtailed so as to force their respective governments to negotiate, even on the question of recognition.



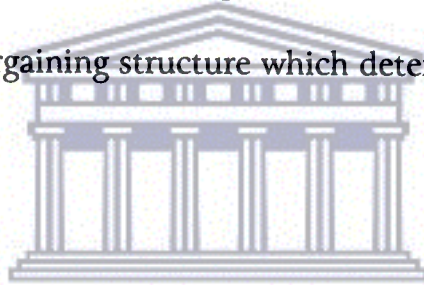
When governments agreed to negotiate with the public employee organization, it normally sought an organization among the public employees which claimed representative. In this way, the issue of determining a particular union as an exclusive bargaining agent came into being. This was on the basis of majority support for the union in a particular bargaining unit.

Not all countries follow this pattern. Most European countries negotiate with the public employee union on the basis of representation which is determined on established criteria, such as strength of support, experience and length of existence.

So, the issue of recognition doesn't take a particular form which can be applied to all governments.

7. Structure of collective bargaining

According to Brookshire and Rogers (1977) bargaining structures normally focus on the organised pattern of the bargaining parties and the location of the bargaining power between the employees organization and employers. It embraces all the aspects of representation of bargaining units, relationships among the different bargaining units, and the nature and the composition of the negotiating teams. It is the particular form of the bargaining structure which determines the success of the failure of bargaining issues.



A structure can appear in centralized or decentralised form. The centralized bargaining structures are widely accepted by the public authorities, because they allow more space for the government to control contentious issues, such as wage determination and retrenchments. This has proven to be an efficient way of bargaining, because the government bargains specifically with joint bargaining units from various levels of the government. However, it is for the employees organization and employers to determine the kind of structure which suits most of their interests.

Such a structure should embrace the following order to be successful:

- an optimum balance between the needs of the employer and the needs of the employee organization,
- The capability of renewal and evolution through a process of collective bargaining and
- Acceptance and supported by those who give the mandate, viz. The government and the members of the union. (Meyer, 1989)

8. Scope of Bargaining

The issues which pertain to bargaining differ from country to country. Most governments have defined, through statutory provisions, which issues to be subject to bargaining. In most cases, the wage issue and other economic benefits of the employees are covered by governing statutes, whilst in other cases, like in Nigeria, these issues are excluded. (ILO, 1988). The underlying assumption is that public service unions in Nigeria have become the source of industrial instability.

On the question of managerial prerogative, which includes issues such as recruitment, discipline, dismissal, size of the public service, promotion and other administrative issues, it is mostly maintained that these be left to the negotiating teams because of the complexity of the government employment.

9. Bargaining agreement

The legality of collective bargaining agreements which emanate from the public sector bargaining table, is mostly subjected to limitations, unlike in the private sector where collective bargaining agreements almost have a legal status which binds all parties to contracts.

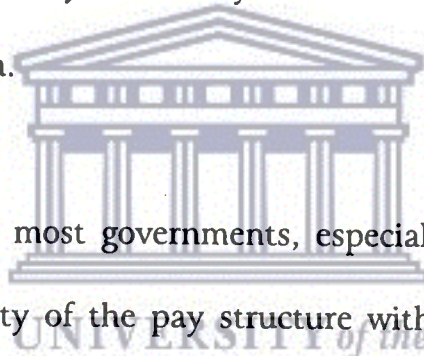
This is justified on the basis that, firstly, the government service is too complex when it comes to the representation of its negotiating team. The bargaining outcome from the negotiating table requires further scrutinization, especially the agreements which bear the budgetary, legal or other policy constraints.

Secondly, the doctrine of separation of power and checks and balances, as mentioned before, sometimes makes it difficult for the agreements to be effective and the decisions require legal support through legislative statutes.

10. Public Sector pay determination

The pay system in the public sector is one of the most contentious issue in public sector labour relations because of its economic effect on national expenditure. Whether the decisions on wages are determined unilaterally or through collective bargaining, the principles and the criteria which are utilized needs consideration.

The ability to pay criteria, bearing in mind the budgetary situation of the state, has been used as a yardstick to determine the pay structure. Most governments have realised that the public employee unions tend to shift the financial resources to personnel spending and this has normally led to an enormous state expenditure. O'Brien (1994) has documented this position by stating that public employee unions tend to press the politicians to raise their wages. The government's response is to resolve the pay question by using the criteria of management rationality (i.e. job evaluation) and economic stability, and to try to reach a consensus with employee unions based on these criteria.



One other criterion used by most governments, especially, in the industrialized countries, is the comparability of the pay structure with the private sector pay. Several past pay commissions have reviewed public wages based on their comparability with the private sector.

CHAPTER III

Labour Relations in Namibia during the period of South African occupation

1. Introduction

The nature of labour relations in Namibia, previously South West Africa (SWA), was influenced mainly by the political dimensions which prevailed during the colonial era. There were no clear or significant organized labour relations to maintain orderly industrial peace. The major emphasis on labour legislation was to give the minimum standard of the modus operandi, rather than securing and maintaining a favourable industrial relations climate. Again, during this colonial period, most of the labour laws concentrated on the private sector workforce and left the public sector to be administered by decrees and administrative bodies. The majority of the workforce was mainly concentrated in the private sector which left the public sector manned mostly by expatriate officials from South Africa.

With the development of mass movements against the South African occupation in the 1960's and early 1970's, the concerns about labour relations in Namibia were expressed openly and worried South African administrative representatives in Namibia. This raised an interest in the nature and composition of the workforce in its totality. The general strike of 1971/72 overhauled and changed the direction of labour relations to become a political resistance against the illegal occupation. This

trend continued until the period of the late 1970's and early 1980's and began to take a more tangible form with concrete proposals for changes of the emerging labour legislations. This period also witnessed a major breakthrough in the mass establishment of labour movements which aimed to change and influence the government's labour decisions. (International Defence and Aid Fund, 1987).

Many labour movements aligned themselves with the liberation movement during those years, and a significant dismantling of apartheid controls took place as gradual reforms of labour relations started to emerge. (Bauer, 1994). The emergence of black trade unions in South Africa also contributed to the relaxation of labour conditions in Namibia. However, labour movements were also faced with severe suppression, and any attempts to form a trade union in the public sector with similar objectives to the liberation movements, were savagely crushed by the authorities.

2. The emergence of public sector employee organizations

As mentioned above, the evident emergence of the trade union movements were witnessed between the period of the 1970's and 1980's although unions had been organized for decades in Africa, there was still no recognized and recognized black trade union in the Namibia public sector. Any effort to form a black trade union in the 1970's had been countered with draconian labour legislations. The South West African People Organization (SWAPO), the

liberation movement, has documented that the National Union of Namibia Workers (NUNW) was launched in April 1970 as an umbrella union federation, but little information exists to substantiate the activities of NUNW inside the Namibian public sector (**International Defence and Aid Fund, 1987**).

The first activities of general workers were under the guise of a Namibian Workers Union (NAWU) which later became known as the National Union of Namibia Workers. NUNW became active in the 1980's and tried to organize the workers across the colour line in both the private and public sectors.

Within the public sector, the early unions that existed were primarily “white unions” or staff associations. Their attempts to become multi-racial were made difficult by the composition of labour segmentation and other colour barriers which existed within labour legislations. The South West African Municipal Association (SWAMSA) was founded in 1969, and it mainly organized white employees working under municipal authorities. However, it became partly multi-racial in 1978, reflecting the increasing members of non-white employees in the municipalities. (**Bauer, 1994**)

The Government Service Staff Association (GSSA) was established in 1981, according to the stipulation of the Public Service Act, 1980 (no 2 of 1980), to

be the mouthpiece of the public service officials, and since its inception, it has accepted “non-white members”. (Public Service Union of Namibia, 1990). At first this was merely a staff association without any power to fight for improved employment conditions.


The other notable employee organization was the South West African Confederation of Labour (SWACOL) which was founded in 1983, to which mostly white dominated staff associations were affiliated, whether in the private or public sector. The aim of SWACOL was to gain international recognition for the labour federation which represented the unions and staff associations. SWACOL tried to gain recognition, especially from International Labour Organization (ILO) and the International Confederation of Free Trade Unions (ICFTU), in order to consolidate their existence as legitimate bargaining partners. With the exception of GSSA, none of the trade unions affiliated to SWACOL survived the 1980's and one can only trace the history of current public sector trade unions in the mid 1980's.

In the mid-1980's labour relations in Namibia took another turn which shaped and again overhauled overall industrial relations. This period finally witnessed the emergency of NUNW which was mainly spearheaded by SWAPO activists, in an effort to organize workers under the guise of the nationalist camp. Most of the trade unions which emerged during this period became affiliated to

NUNW. As a result, the effort to organize the majority of Namibian workers, across all sectors of the economy, became clearly a SWAPO endeavour as the NUNW remained affiliated to SWAPO. This affiliation to the nationalist movement, which became the ruling party after independence, has caused tensions and contradictions within trade unions circles and undermined the autonomy of trade unions, even in the independent Namibia.

[The affiliation question will be dealt with in chapter five in detail].

Again, in 1987, the Namibian Public Workers Union (NAPWU) was launched with the vision to organize.



All workers and pensioners employed or having been employed in various job categories related to the public service including Governments Ministries, Parastatals, Semi-State Institutions, private hospitals and schools as well as any organization providing social services that is wholly or partially dependent on government funding. (Constitution of Namibia Public Workers Union, 1987, as amended in 1995, p.4).

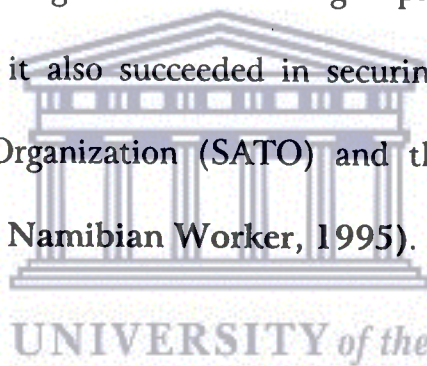
NAPWU remained affiliated to NUNW for the following reasons:

- to advise the NUNW to maintain and strengthen further bonds of common

identify between the Namibian workers and the SWAPO party,

- by noting the recognition of the fact that one cannot exist in a political vacuum, therefore it is indispensable need to have a forum upon which the political aspiration of the workers can be expressed. (NAPWU National Congress, 1995, P.4).

During the late 1980's, the Namibia National Teachers Union (NANTU) emerged. NANTU was launched in 1989 to organize the teaching in the public and private undertakings which operated on government funding. Apart from the affiliation to the national body NUNW, it also succeeded in securing and affiliation to the Southern Africa Teaching Organization (SATO) and the all African Teachers Organization (AATO). (The Namibian Worker, 1995).



In 1990, the GSSA changed its name to the public Service Union of Namibia (PSUN), because of the “changing times” and also so as to incorporate” Namibia in its own name for the sake of national identity. But the aim remained the same: to “ensure the welfare of a contented, effective and adequate Public Service within an environment of labour peace”. (Credo, 1990, p1). The Teachers Union of Namibia (TUN) also emerged in the 1980's, but its existence has had little effect within the public sector labour relation.

3. Development of a legal framework in Namibian labour relations

Prior to the enactment of the current labour legislation in 1992, Namibia had experienced a wide range of legislations. The more important act which had a huge coverage of industrial relations was the Wages and Industrial Conciliation Ordinance Nr 35 of 1952. Public Service workers were excluded from this legislation. In fact until 1978 when the ordinance was reprogrammed to cross the racial lines, black workers were, by definition, excluded from participation in the statutory industrial relations system. Furthermore, the ordinance tended to favour decisions taken by the government and reflected the general imbalances between employee and employer organizations, rather than promote genuine collective bargaining.

With the political changes experienced in the 1980's the Transitional Government of National Unity (TGNU), another interim apparatus of the South African governing institution, resolved to introduce "remedial measures" to rectify the labour situation in the country. The Conditions of Employment Act, 1986(Act 12 of 1986) was then adapted to "modernize" labour laws and improve the conditions of employment for workers. (Namibia, 1989). But again the Act did not cater for all employees in Namibia, particularly the civil servants. In its entirety, the labour law failed to address the broader collective labour relations framework and concentrated mainly on general labour practice which should normally have been the task of the

employer. The Act was even criticized as only having an effect on individual workers rights instead of tackling issues of collective labour rights. The civil service employees were mainly catered for through the National Labour Council which was seen as an entrenched control mechanism of the government and part of the philosophy of the apartheid system. (Bauer, 1994).

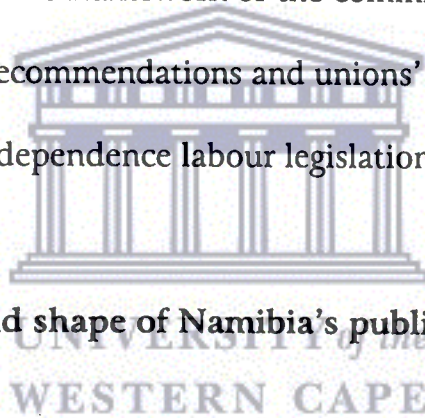
Lastly, because of the deteriorating labour relation situation, the TGNU decided to rectify the situation by appointing a Commission of Inquiry into labour matters in Namibia in 1987, known as the Wiehann Commission. Initially, it was felt by the unions that the interim government's actions were to bring the trade unions into the mainstream of the system in an attempt to pre-empt the growing labour movement. The NUNW contended that the commission was operating from an "illegal mandate" and its approach to merely reform or adjust the existing labour relation system was totally uncalled for. (The Namibian, 1989).

But later, unions under NUNW, which included the public workers union, NAPWU, did make recommendation to the commission with a strong emphasis on the commission recommending one labour law which expressed the fundamental principles of rights, inter alia, the right:

- to work
- of freedom of association

- to bargain collectively
- to strike
- to a living wage and health and safe working conditions
- to social security benefits (**The Namibian, 1989**).

By the end of the decade, the commission had suggested that the rights of African workers to form and join trade unions be recognised and that labour practices and the industrial relations system be approximated to international labour standards as closely as possible. But the time framework of the commission coincided with the independence, and both the recommendations and unions' submissions were largely incorporated into the post-independence labour legislation.



4. The currently size and shape of Namibia's public service

The definition of the public service differs from country to country because of its composition and the nature of services which are delivered. Although the Namibian government does not have a clear definition of the public service, it does make a provision in the Public Service Act, (1995) for its composition. The act provides that the Public Service "shall consists of all such persons as may be employed permanently or temporarily on full-time basis or under a special contract or under any contract of employment" negotiated by the Prime Minister on the recommendation of the Public Service Commission. (**Namibia, 1995, p.8**). This includes all employees in

government ministries, National Defence Force, the Police and all public Agencies and Offices. It does not include other employees in the public sector such as the staff of parastatals, various non-governmental bodies, regional and local governments or employees of other bodies which may obtain a programme grant from a government department.

To give an overall picture, the report on Labour Force sample survey, carried out by the Ministry of Labour and Manpower Development (1991) put the total labour force in Namibia at 493,000 of which 394,000 were recorded as being employed. The public service represented about 58,000 of which 14,7 percent were employed.

Since then, the size of the public service has grown for various reasons, such as affirmative action programmes, indigenisation or Africanisation of the public service, working age population and some measures to rectify the labour market segmentation.

Currently, according to 1995/96 budget, the compliment figure of public service posts which were budgeted for, stands at 78,038 and according to the October 1995 payroll the actual figure stands at 62,511. The approved compliment figure represents only a national ceiling for the post authorised by the Public Service Commission and it does not reflect the exact figure of the public service could be around 62,571 which includes parliamentarians and political office bearers.

According to the report of the Wage and Salary Commission (WASCOM, 1995) the figure could be over-estimated, because of double payments which are sometimes experienced in government service payroll.

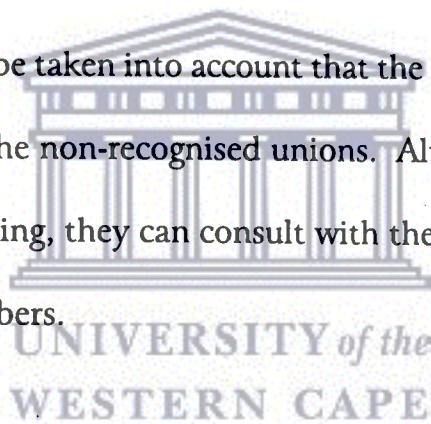
5. Current public service unionization

Currently, four recognised trade unions, PSUN, NSPWU, TUN and NANTU represents the Namibian civil servants. This indicates the fragile relationship amongst the organized labour in the public service. Of these four unions, only NANTU is regarded as having a role of bargaining agent for the teachers from primary to college level. Out of the 15,000 teachers country wide, NANTU claimed to represent 8,000 teachers while its counteract TUN insists that it represents around 4,600 teachers according to statistics provided by both unions. (Kavari, 1994)

In terms of Section 58 of the Labour Act, 1992, the union can be granted the status of an exclusive bargaining unit provided that it is a registered union and represents the majority of employees, namely 51 percent or more, who falls within the bargaining unit. NAPWU who has claimed to have a total of 35,000 signed-up members within he civil service has also applied to the government for recognition as an exclusive bargaining agent for the non-teaching employees. This move has

provoked the PSUN and TUN to submit another joint application for recognition, and as a result, the government is obliged to organize so that the unions could face the ballot battle.

In an interview with the Gerson Tjihenua who is in the Office of the Prime Minister, he stressed that it is difficult to determine the validity of the claims presented by NAPWU and PSUN because several public employees belong to more than one union. Therefore, the government can only result to the ballot system so as to allow public employees to exercise their choice of union they prefer to represent their interests. It should also be taken into account that the recognition of one union will not automatically erase the non-recognised unions. Although they cannot be included in collective bargaining, they can consult with the government on specific problems affective their members.



Attempts by the public employee unions to form one strong trade union which would represent the interests of public employees proved to unrealistic. In another interview with Mr Marius Kundumo, project co-ordinator of NANTU it was emphasized that common ground been found for NANTU and TUN, and discussions are on track to achieve a single union for teachers. But this seems to be an ideal, and occasionally the two have unions launched scathing attacks on each other. The other

factor to consider is the current position of PSUN and TUN never spoke out vigorously against the colonial government on the issues pertaining to working conditions and wage determination. (The Namibian, 1990).

Even the joint forum which was set up by the four public unions to engage in negotiation with the government for a better pay determination did not survive and was obviously weakened by the conflict of interest which resulted in the unions splitting into two camps. It seems that the interest of unions in the public sector do not always reflect those of the union members, but the political agenda of union leaders (The Windhoek Advertiser, 1994).

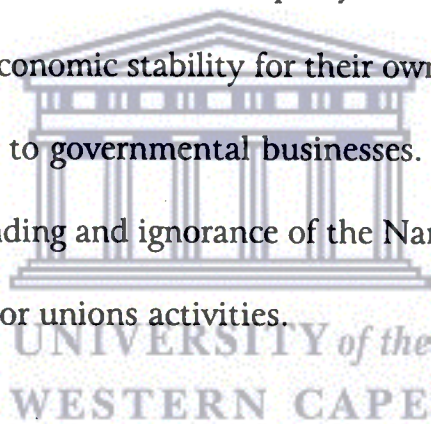


6. Administrative behaviour

As was noted previously, public sector bargaining stems from a dual function performed by the government as an employer and as a provider of public goods and services. On that basis, the government's administrative behaviour expresses unique characteristics. Administrative behaviour is much influenced by the political and organizational characteristics of government bodies and the pressure that unions and organizational characteristics of government bodies and the pressure that unions enforce on these bodies. Then, the government's bargaining party tends to serve a dual role by coordinating the internal organizational interests and at the same time recognizing that it represents the government in its dealings with the unions. The

internal diversity posed by the governmental bodies puts the government negotiating team in a position to influence the elected office bearers and the parliamentarians to exercise a more accommodative approach to the collective bargaining process. Especially when the political climate is hostile towards the public sector unions.

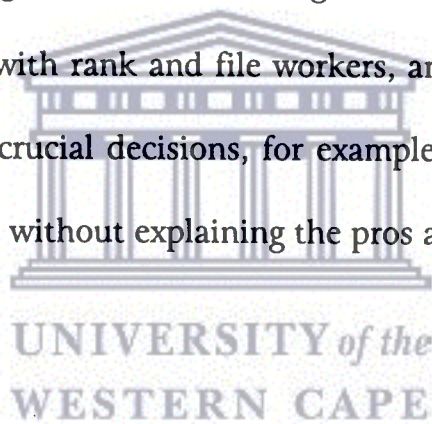
In Namibia, the situation exposes the same administrative behaviour due to the fact that most the politicians do not possess a good understanding on the level of unionization in the public sector. Some of the politicians have even gone to the extent of lambasting the public trade unions openly for intentionally sabotaging government policies towards economic stability for their own interest and regard the unions as being in opposition to governmental businesses. This kind of statement indicates the lack of understanding and ignorance of the Namibian politicians about the conduct of the public sector unions activities.



7. Democracy and responsibility

Democracy and responsibility should be exercised within the collective bargaining process. Bargaining structures should be devised to be representative enough so that they cannot be repudiated by constituencies of the bargaining parties. The negotiating team of the unions should convince the rank and file workers that they are well represented in bargaining. Such structures should make the results of the negotiations more visible so that both the government and rank-and-file workers can

influence the negotiations. The degree of democracy embodied by the bargaining structure will only be determined by the ability of the constituencies to control and influence the position of the bargaining parties. It is impractical to regard bargaining as “collective” if the ordinary members of the unions have no substantial influence, control and checks over their negotiating team. Again, if the government negotiating team finds the bargaining agreements repudiated by the legislative without convincing reasons, then the administrative bargaining structure lacks a well defined responsibility. To this end, it is observed that the Namibian public sector union leaders have sometimes indulged themselves in negotiations with the government without proper consultation with rank and file workers, and they have even been accused of manipulating the crucial decisions, for example the affiliation saga, to favour their political interests, without explaining the pros and cons of the decision to the ordinary workers.

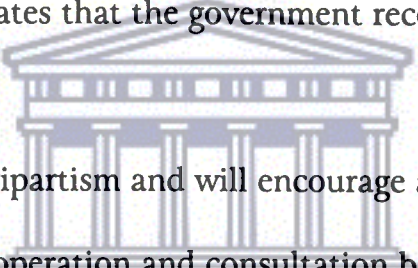


Chapter IV:

The current nature of the legal framework

I. Introduction

Before the current labour law which came into effect in 1992, labour matters were regulated through the national policy on Labour and Manpower Development, with the aim of making the trade unions one of the main instruments of change. The policy guidelines has been adopted by the Namibian government during the year of independence, 1990. It stipulates that the government recognize



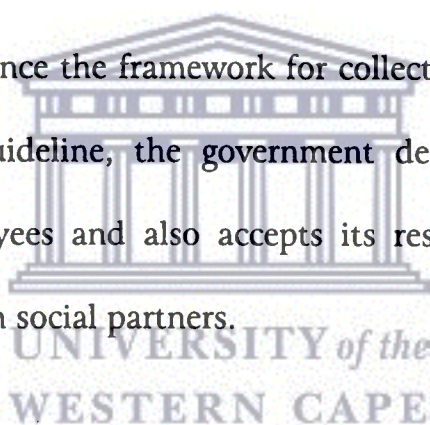
the function of tripartism and will encourage and promote full co-operation and consultation between the government employees and employers including the respective representative trade unions and employers organisations (Namibia, 1990, 1).

The right to freedom of association, including the right to form and join trade unions in all economic sectors was endorsed by the government in conformity with the Constitution of the Republic of Namibia (1990's) which contains a provision for fundamental rights and freedoms. In this policy guideline, the government also accepted collective bargaining between employers organizations and trade unions in

pursuance of regulating matters of mutual interest. This was considered an essential process of social labour relations and should, therefore be promoted.

On this basis, one can stress that with the adoption of this policy guideline, it has earmarked the era on which the fundamental aspects of collective bargaining are being established. The aim is to build a strong partnership of Namibian labour relations with the view of strengthening each partner's responsibility to the economic development.

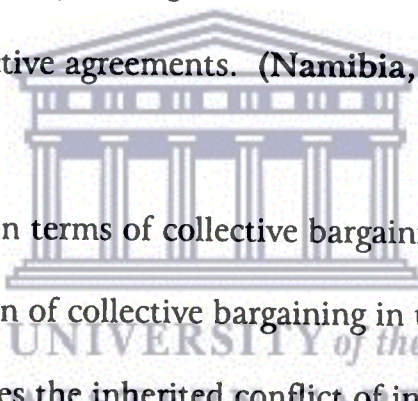
It goes without saying that since the framework for collective bargaining has been manifested in the policy guideline, the government declares and accepts the fundamental right of employees and also accepts its responsibility to promote bilateral consultation between social partners.



To consolidate the relationship between employee and employer organisations, the Labour Act, 1992 (no. 6 of 1992) was passed. The Act which governs industrial relations in Namibia today has been hailed as the most important legislation in the history of Namibia. Not only has it codified many other legislations which previously dealt with industrial relations in Namibia into one, but it is also applicable to all employees in both sectors except for members of the Namibian Police and Defence Force.

Together with the machinery for collective bargaining, the act deals specifically with,

- the regulation of basic conditions of employment,
- provision for the prevention of unfair labour practice,
- provision of registration and certification of trade unions and employer's organizations,
- the establishment of a Wage Commission for wage determination and a Labour Advisory Council,
- handling of labour disputes arisen between employee and employer organizations, whether they are registered or not, and
- the regulation of collective agreements. (Namibia, 1990).



The most important aspects in terms of collective bargaining contained in the Act, actively sets out the promotion of collective bargaining in the context of tripartism. The Act basically acknowledges the inherited conflict of interest in the relationship between employer and employee and the resolution of conflict that can only be achieved through collective bargaining. In this matter, an employer is obliged to negotiate with any registered trade union which has the majority support at the work place, and such a union can enjoy the status of having exclusive bargaining rights.

The Act prohibits the unilateral alteration of condition of employment by the employer which is regarded as “subversive and improper collective bargaining”, and any failure to negotiate in good faith would result in being penalised according to Act

provisions, and the employer can be urged by the Labour Court to restore the conditions of employment which have been violated. The Labour Court established as a mechanism to promote collective bargaining and hear any complaints from an employer or employee organization or any individual employee regarding the labour matters. The Labour Court is given power to order parties to negotiate where they have a duty in terms of their collective agreements.

The scope of bargaining is subjected to the collective agreements which are negotiated between the employer and the majority union at the workplace. Such agreements could embrace any “matters of mutual interest” for employers and employees, and these matters are normally wages and working conditions. (Labour Act, 1990).

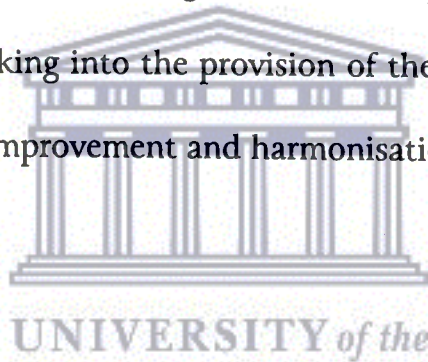


2. Collective Agreements

The Labour Act makes provision for collective agreements to be submitted to the labour Commissioner for registration. The first collective agreement is normally the recognition agreement. In terms of this agreement, the employer formally recognizes and enters into a collective relationship with the union and determines the procedures for conducting that relationship. The agreement would provide information on whether or not a registered trade union or group of trade unions has been recognised by the employer as an exclusive bargaining agent and the purpose of such recognition.

action in accordance with the International Conventions and Recommendation of the ILO. (Namibia 1990: 51-52).

For that matter, after consultation and discussions between all social partners, the Namibian government ratified three conventions which relate to freedom of association and protection of the right to organize (no. 87 of 1948); the application of the principles of the right to organize and to bargain collectively (no. 98 of 1949) and the promotion of the implementation of International Labour Standards (no. 144 of 1976). Being a member of the ILO, the government also prepared to report to the ILO annually on measures taking into the provision of the ratified conventions to show its commitment to the improvement and harmonisation of labour relations in Namibia.

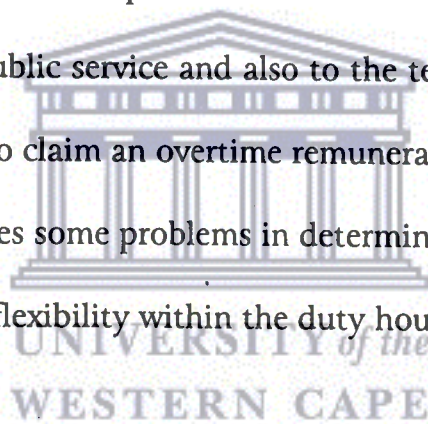


4. Debate on the current labour legislation

While the Labour Act has been hailed as a labour law strives to balance the power of employer and employee and render the protection of basic labour standards, it was not accepted unconditionally, especially four years after the Act was passed. The Act, provides labour standards which conform with the International Labour Organization's recommendations and conventions, but the government has become more sceptical on some provisions. Initially the government wanted to exclude the public service from this Act, and formulated a piece of law which deals specifically

with the public service. After a strong reaction from the public trade unions for their interests to be included and be regulated in the same manner as with the private sector employees, the government conceded albeit with some reservations.

In an interview with Mr Gerson Tjenuna, from the Office of the Prime Minister, it was stressed that after some practical experience, the government found that there are some clauses within the Act which seem to be inappropriate to the public service because of the complexity which exist on this level of service. For instance, the overtime clause poses some practical problems in terms of its applicability to the middle and upper levels of public service and also to the teachers. The Act makes provision for each employee to claim an overtime remuneration, but when it comes to these job categories, it causes some problems in determining which hours require remuneration because of the flexibility within the duty hours.



The government's position is not to shift away the governance of public sector labour relations from the Act, but to seek exemption from those clauses which create technical problems. On this matter, the unions, especially NANTU, lambasted the government for a lack of mechanism to enforce the labour legislation and stated that the claim from the government which emphasised the inappropriateness of the Act to the public service did not hold any water. These sentiments were also echoed by Peter Iilonga, General Secretary of NAPWU, in an interview, in which he stressed that if one goes on saying that some clauses are inappropriate to the public service,

then the domestic or farm industry could follow the suite and in the long run create unavoidable precedents. Again, Marius Kundumo of NANTU, sees this notion in the light of the government's covert actions to unilateral decisions, because any exemption from certain clauses of the Act, require a consultation process with the affected unions.

In addition to the Labour Act, the government passed the regulations under the Public Service Act, 1995 (Act 13 of 1995) to redefine and modify the process of collective bargaining so that it would be suitable to the public service. Again, in this regard, public service unions reacted strongly against the regulation under which the process of negotiations and collective bargaining can operate. Unions have stressed that the process has been made more limited and complicated when compared to the private sector. Public sector trade unions further argued that the procedural arrangement was made more lengthy and cumbersome for an ordinary trade union, and to fuel the antagonistic attitude, the government seems to be reluctant to finalise the recognition agreements.

Actually the regulations under the Public Service Act, provide the mechanisms for negotiations and collective bargaining in the civil service. It stipulates that the negotiating forum be established under the Office of the Prime Minister. The Public Service Commission shall advise the office of the Prime Minister regarding any conditions of service which need to be negotiated with the trade union, so that these

conditions can be approved by the Prime Minister before the negotiation process.

Basically, it is the Office of the Prime Minister which shall be responsible and directly involved in the collective bargaining process with the trade unions and provide all necessary resources required for a conducive bargaining process. The Treasury Institution, within the Ministry of Finance, acts in an advisory capacity during the process and is required to make an input on issues which have financial implications.

The collective bargaining itself, as mentioned before, is regulated in accordance with the Labour Act, and also subjected to any collective bargaining agreement. Any party can approach any negotiating body, which is normally established under a recognition agreement, for a meeting and indicate the issues to be negotiated. The office of the Prime Minister sets up draft guidelines on the advice of the Public Service Commission, and then such a draft is submitted to the Prime Minister for acceptance. The Prime Minister shall define the parameters within which is the Office's jurisdiction to negotiate. Then such parameters should be agreed to by all parties and agreements be formulated and signed before it is presented to the office of the Prime Minister again, and to the Treasury Institute for approval, if such a bargaining agreement bears financial implications.

If consensus cannot be reached by both parties, other avenues should be considered

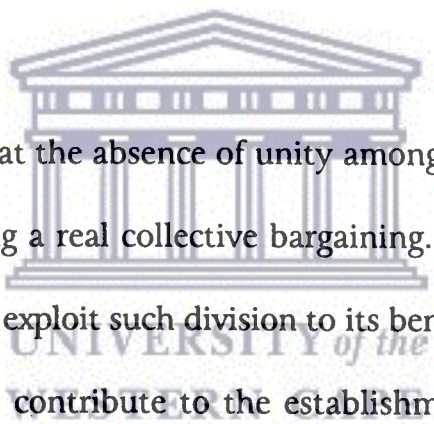
according to the internal dispute settlement procedure before the dispute can be lodged with the Labour Commission. Again, if the internal dispute settlement procedure could not reach a consensus, the Office of the Prime Minister could revise the parameters for further negotiations. Only after a deadlock is reached after revised parameters, can a dispute be declared, in terms of the Labour Act, and formal procedure of resolution of dispute can follow. (Namibia, 1995).

It is interesting to note that during the collective bargaining process, the Office of the Prime Minister is bound, from time to time, to seek the advice of the Public Service Commission which can make the process more complicated and loaded with bureaucratic constraints. It is also obvious that the public unions are not satisfied with the procedural aspects of the bargaining process and have occasionally accused the government of purposely sabotaging the process and sometimes refraining from its role as an employer and social partner which enhances the effective co-operation for creating a conducive atmosphere where labour relations can prosper.

5. Collective bargaining power

Until the end of 1995, there was no genuine collective bargaining in the Namibian Public Service, because no recognition agreement had been concluded which would provide the necessary framework to put the process of collective bargaining into motion. While NANTU has achieved recognition as an exclusive bargaining agent,

and been bestowed such status, until that period, the paperwork has not been concluded. According to Romans Kampungu, Project Coordinator for NANTU, the real collective bargaining with the government has not started yet. What they actually engaged in, was still some sort of consultation and negotiation to achieve a desired collective bargaining, and what was really needed was the acceleration of the process to conclude the recognition agreement. In this light, the bargaining power can only be analysed in terms of the influence the parties had on the negotiation and consultation basis. But this kind of power relation will also determine future collective bargaining power.



It is, firstly, important to note that the absence of unity among the public unions is a major impediment to achieving a real collective bargaining. Kampungu, further stressed that the government can exploit such division to its benefit to prove that the public unions are not willing to contribute to the establishment of a negotiation process. The majority representation which is required by the unions to engage in collective bargaining with the government, make it difficult for such fragile unions to achieve with representation. It seems that this fragments weakening the bargaining power of the unions. Past political differences, lack of binding ideology and vision can be cited as determining factors towards whether the unions can combine their bargaining power to influence and lure the government to the negotiating table. This can be discussed and analysed alongside the affiliation to the political party.

of the workers to continue the historical ties with the ruling party, because it has not yet caused any concrete damage to the union members. However, room could be left for constructive debate and the relationship has been constantly renewed to find a common ground of interest. The reasons which were presented by NAPWU during its National Congress in 1995 (see chapter two) can still substantiate the position held by the proponents of affiliation.

While the position for some trade unions such as NAPWU to remain affiliated to the ruling party, the feeling among the labour relations circles indicate that the matter has not enjoyed a thorough analysis, and it appears that there is a sense of apathy among the workers to debate the issue. Firstly, at the congress, the issue was not properly debated because of the virtual non-existence of worker education on the question of affiliation. The misperception that disaffiliation means opposition to the ruling party has therefore taken root and as a result, the proponents of disaffiliation have since been perceived as being anti-SWAPO. Despite the resolution at the congress in 1991 to intensify worker education, it became evident that much attention needs to be given to the effect of affiliation, before the issue can be debated at a national level.

Secondly, because of the federation's affiliation to the ruling party, the government feels that it has to reward the labour movement for its support, particularly as far as

commented, it is difficult to find acceptable reasons for the driving force behind such a political alliance and it serves little purpose, if any, to have the trade unions affiliated to the party in power.

On the other hand, the PSUN has also expressed that while it is in the interest of public sector employees to have a single union in the public service, and it wholeheartedly supports the unification of the labour force in Namibia, such unity should not be at the expenses of the independent trade unions. From African experiences, whenever an umbrella body of trade unions is aligned to a ruling party, divisions, misgivings and conflict may arise, particularly in the public sector unions whose employer used to be the same political party. Leaders of affiliated unions would find it difficult to oppose the government policies which are contrary to their trade union ambitions. While the struggle for economic rights of labour could not be easily achieved without participation in the general struggle for political issues such as unemployment, provision of social services and inflation, among others, it does not mean that unions should align themselves with a political party. It was even felt that the collapse of the efforts to establish a forum between two unions loyal to the ruling party and two other political unions in the public service was a result of pressure from politicians. (The Namibian, 1993)

Union leaders tend to take advantage of the historical background of political dimensions, and submit their mode of thinking in terms of political lines. For

instance, NANTU and NAPWU understood that during the colonial era, PSUN supported the actions of the oppressor and was used by them to achieve their goals and intentions. It is easy for them now to assume that PSUN and TUN still receive preferential treatment by the employer. On the other hand PSUN believes that NAPWU operate within the external influences and does not have a clear objective of what is the best interest of their members. With these kind of sentiments still being advocated openly, trust among the union leaders can be diminished, leaving the workers struggling to find a nest which accommodates their interest. Furthermore, this friction can result in individual union members losing confidence in unions, which in the long run reduces the bargaining power of the unions.



CHAPTER V - CONCLUSION

1. Recommendation and Conclusion

The general trend in Namibian public sector bargaining is being perceived by the employees and some labour experts as moving from strength to weakness. Before independence, the workers used to be strong enough, through their unions, to bring about change in labour legislation, but once legislation was passed to promote collective bargaining, unions became weak and ineffective. The government, as an employer, benefits from this situation and sometimes capitalises on the union representative's weak point which puts the government in a stronger position. As a result, the employer organizations remain at loggerheads with the government because of their incapacity and inability to influence government decisions.

This weakness stems from structural handicaps and imponderable hardships such as the general high degree of illiteracy and unskilled workers, mistrust and fear of the unknown among the public trade unions. Lack of negotiating skills, insufficient knowledge and strategic planning and basic preparedness to compromise on certain labour matters put the employees organizations in a weak bargaining position. The absence of a binding ideology based on employee interest among the trade unions has contributed much to the continued hostility between the unions.

The public sector unions have also been effectively impoverished by the nature of their origins, the colonial legacy of repression and reform tied together by the fragile Namibian economy. It is important to note that because of being under industrialised at present, the Namibian economy cannot absorb the enormous unskilled labour force which roam the urban street. As a result unemployment has become a thorny issue, and the trade unions seem unable to tackle this problem by becoming a partner with the government to facilitate job creation, instead of accusing the government of letting the unemployment rate skyrocket.

The colonial oppression has influenced most of the workers to maintain that their struggle in the workplace and worker rights are part and parcel of the broader struggle against the political oppression. Although this notion was justifiable during the colonial era, it has paralysed and neutralised the organization of the struggle for economic ends, and poses a terrible headache to some of the trade unions.

To balance the power of collective bargaining in Namibia's public sector still seems to be a long struggle which lies ahead for all parties. First and foremost, it is essential and imperative for all stakeholders to develop an aggressive and effective mass based education campaign to educate and train the workers about basic knowledge and skill on labour matters. There is a lack of understanding among the public workers about the nature of unionization and the reasons for belonging to a union and also to bargain collectively with the government. In the same vein, politicians and elected

office bearers, have also revealed insufficient knowledge about collective bargaining with the public employees organizations. As a result, the rift between the trade unions and the government continues to widen, and, as noted, unions accuse the government of pursuing authoritarian tendencies and playing a “behind-the-scenes” role by manipulating, instead of engaging in a struggle to bring about industrial peace and administrate the labour legislation effectively. It is in the interest of both parties to simplify the language and the process of collective bargaining.

Secondly, given the fact that the public trade unions in Namibia were largely organized from above with the political objective in mind, it is important that the efforts should be expended on the shopfloor level in order to improve the living and working conditions of the ordinary workers. Although the legacy of apartheid cannot be done away with overnight, or even within five years, it is very important to note that the process of training can do much to alleviate the impediments which have weakened the bargaining power of trade unions.

Thirdly, the government should strive to achieve a common vision with the trade unions which encompasses the national interest for the benefit of all parties. The government has always said that it attaches great value and recognises the important role that trade unions can play in fostering the national economy. But it seems that the message has not reached the individual members of trade unions. The message is being preached only in boardroom and conference halls and fails to be

communicated to constituencies. It seems there is no proper search for an appropriate solution to create a binding ideology which eliminates the unwanted historical baggage.

On the other hand, for the trade unions to strengthen their bargaining positions, they should overcome the stumbling blocks of the enduring legacies of apartheid and economic constraints and relax its strong ties with the governing political party. I agree with the opinions expressed by **Bauer (1994)**, that as long as the major trade union federation and affiliated public unions remain aligned to the ruling party, the public unions remain divided, unable to play a major role in nation-building and organize the employees effectively. It is in the interest of the survival of public trade union's to collaborate with the civil society and other various civil organizations to consolidate their autonomy and be regarded as legitimate representatives of the Namibian public sector workers.

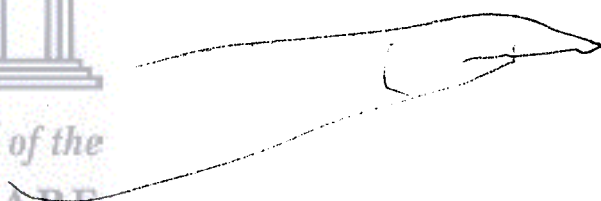
Since independence, the public workers have won a considerable struggle and made some notable gains in the workplace, especially in the parastatals, but despite these gains the unions remain divided. Only through serious dialogue and negotiations can the gap be bridged. Unions have paid lip service to the importance of unity among themselves and failed to combat anti-cooperation practices which are liable to the fragment of the unions. So, the government as an employer, should really start facilitating worker democracy, tolerance and promote trade union unity, instead of

enjoying the triumph of benefitting from such fragmentation.

The government needs to make a firm commitment to alleviate their antagonistic approach which is at the forefront of its development strategy. To succeed, this commitment will need to be backed by an improvement in accountability to the employees and administrative efficiency to deal with labour conflict at each level of the government.



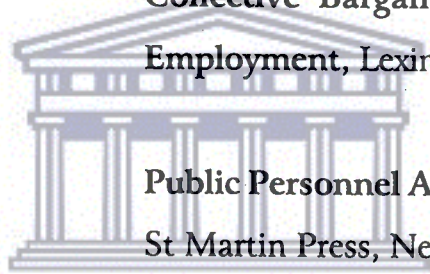
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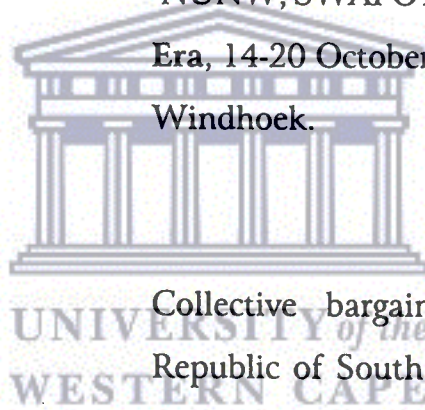
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