

Blocking transformation

Grove Primary, a school in the Western Cape, took the Minister of Education to court in June in an attempt to block the process of education transformation. The school, which took up the case on behalf of 80 ex-white Model C schools, was contesting rationalisation of education and teacher redeployment. It subsequently won the case.

Background

A programme of rationalisation and teacher redeployment was adopted in the Education Labour Relations Council (ELRC) last year (see *SA Labour Bulletin* Vol 21 No 1, February 1997). The first step was to introduce funding equity between the provinces. This would result in some provinces (like the Western Cape and Gauteng) losing teachers, while others (like the more rural Eastern Cape) would gain. It was agreed that the total number of posts would not, however, be reduced - ie there would be no retrenchments. Teachers declared excess in one institution would be redeployed to where they are needed. A detailed procedure manual was drafted to guide teachers through the plan. Teachers could also opt out of the system by taking a voluntary severance package (VSP).

There have been enormous problems in the implementation of rationalisation.

- Government has offered VSPs indiscriminately. No posts have been transferred to under-resourced schools.
- Teacher:pupil ratios (set at 40:1 for primary

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schools and 35:1 in secondary schools) have not been properly implemented. The number of pupils has been divided by the number of teachers (including those in administrative posts with no classes, and teachers then being declared in excess). Actual class sizes have remained high.

It is in this confused and insecure environment that conservative forces have started to mobilise.

The case

The court set aside certain resolutions of the ELRC and sections of the redeployment procedural manual. These resolutions make it obligatory for school governing bodies to employ teachers who have been declared "in excess" at their schools and whose names have been placed on the redeployment list.

Grove Primary argued that its governing body had the legal power to employ whomever it believes is best suited to the job. The school argued that teachers placed on the redeployment list were not necessarily the best teachers for the job. (The criteria used for redeployment relate only to whether educators have been declared "in excess" and not to qualifications or experience.) Grove Primary argued that in April last year, when the resolution on rationalisation was passed, the school was legally defined as a Model C School. This

meant that its governing body had the power to appoint teachers. On 1 January this year, the South African Schools Act came into force. It gave all governing bodies the power to recommend the appointment of teachers, on condition that such recommendation was approved by the provincial education department.

The school therefore argued that its governing body had significant powers over the appointment of teachers and that, in the sense that they restricted these powers, the ELRC resolutions on rationalisation were unlawful.

The defence

Defending the case, government argued that rationalisation is a constitutional imperative and that redeployment is a key component of rationalisation. It argued that agreements signed with the teacher unions on rationalisation were in keeping with the constitution and that they were signed before the Schools' Act came into play. It follows that governing bodies are legally compelled to employ teachers from the redeployment lists. The presiding judge did not agree.

Implications

The implications of this case for the transformation of education are very serious. The rationalisation process has ground to a halt. Teachers declared "in excess" are now forced to compete for vacancies on an open list. If they are not appointed there may be no option but to retrench. SADTU negotiator, Don Pasquallie, says "The original agreements stated clearly that teachers who were declared 'in excess' would be carried until a position was found for them. They would be retrained to take up a new position. This process will now fall by the wayside."

The second implication is that racial composition of teaching staff will probably remain unchanged. Ex-Model C schools can

legally employ white teachers, previously-Indian schools governing bodies can legally employ Indian teachers and so on. This undermines one of the key objectives of redeployment - to ensure non-racial teaching staffs. Affirmative action (both in terms of race and gender) will now become impossible unless government is prepared to resort to more clumsy mechanisms such as quota systems.

The case has also undermined collective bargaining as a whole in the education sector. Important issues - such as appointments - have now been excluded from bargaining. The level of bargaining has moved in these instances to individual schools. To succeed in certain transformation projects, the state will now have to bargain with each and every governing body. Since they number approximately 20 000, this will be an impossible task.

A way forward

The state has three options.

- ☐ it can appeal the case and hope to receive a different judgement;
- ☐ it can change the ELRC resolutions to ensure that they are in line with the new laws; or
- ☐ it can amend the law.

SADTU believes strongly that the process of rationalisation has to continue. The union is lobbying for the third option, which would allow the rationalisation resolutions to be implemented. The union believes that a section should be added to the Acts to allow the Minister of Education to take control of teacher appointments in periods of transformation. The state must re-commit itself to the original principles of rationalisation, that is, equity, redress and non-racialism. Resources must be provided to ensure that these principles become a reality. ★

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