

Essential services

assessing the wage arbitration

Last year's wage negotiations between the state as employer and unions in the public sector were particularly adversarial. Thousands of public sector workers went on strike towards the end of July and intermittently in August 1999 in support of their wage demands. However, in terms of section 74(1) of the LRA workers employed in essential services (mainly in hospitals, prisons and police stations) were denied the right to strike and therefore resorted to arbitration to settle the dispute.

The dispute concerned the parties' failure to reach agreement on wages and other terms and conditions of employment for the year running from July 1999 to June 2000. The unions demanded a 7,3% on average wage increase and the state implemented a 6,3% wage increase. The parties were thus just 1% apart. This 1% amounted to an increase in the wage bill of approximately R540-million.

History of the dispute

In January 1999, the unions in the Public Service Co-ordinating Bargaining Council (PSCBC) met to discuss their wage demands. Each union abandoned its individual demand and formulated an agreed joint demand of a 15% wage increase, amounting to R7,6-billion. In

The arbitrators in the essential service wage dispute in the public sector found in favour of the state and against the unions. Dawn Norton and Randall van Voore discuss the various arguments presented by the parties, the reasons for the arbitrators' award and some possible implications for labour.

February 1999, following the Minister of Finance's budget speech, the state tabled its offer of 5,7%. This was the amount announced in the budget and the mandated figure for government negotiators for increases in public service wages. It amounted to R3-billion. In April 1999 the unions in the public service declared a deadlock with the state. "

In May the unions referred the wage dispute to the CCMA for conciliation. The parties met that month, but the dispute remained unresolved. In June the unions made a request for arbitration in terms of section 74(1) of the 1995 LRA.

During late July and early August

Column contributed by Cheadle, Thompson and Haysom

various members of the unions involved in non-essential services went on strike and those in essential services pursued the route of arbitration as the law precludes them from striking

On 12 August 1999 the state notified the unions that it would implement an average 6,3% across the board wage increase (except for employees in the education sector who received 7%) with effect from 1 July 1999. By the time the arbitration began in November 1999 the state and unions were 1% apart.

The arbitration ran for 24 days between November 1999 to May 2000. The arbitrators were Sarah Christie (chair), Mahomed Jajbhay and Lavery Modise. All in all the parties called 17 witnesses to testify.

The participants

There were seven applicants in the arbitration, divided into two main groups, namely the COSATU unions, and the 'independent unions'. The COSATU unions consisted of NEHAWU and POPCRU. The independent unions consisted of PSA, PAWUSA, HOSPERSA, the National Public Service Workers Union (NPSWU) and the South African Police Union (SAPU). The state was represented by the Minister of Public Service and Administration. All the parties are members of the PSCBC.

COSATU union arguments

During the course of the arbitration, the COSATU unions advanced the following arguments which were largely supported by the independent unions:

Increase of 6,3% lower than inflation

The COSATU unions argued that the historical inflation rate for the year 1998/1999 should be considered as that figure was known and certain, and was the only measure for quantifying how employees

had maintained or improved their real earnings or standard of living. Core inflation (the measure which excludes interest rates and food prices as they are volatile indicators) averaged 7,7% for June 1998 to June 1999 and CPI (consumer price index) averaged 8% for that same period.

Need for minimum standard of living

CASE (Community Agency for Social Enquiry) conducted a survey of just over 200 NEHAWU members working in the health sector. The results of that survey showed that

- approximately two thirds of those members are the sole income earner in their households,
- they provide financial support to unemployed dependants,
- most of the households are in debt (to the value of approximately twice their monthly wage)

Evidence led during the arbitration revealed that income levels are such that for many lower level employees the offer of improved benefits in the public service (such as medical aid or the housing subsidy) remained an aspiration, because workers could not afford the employee contribution to those benefits.

Working conditions

The COSATU unions argued that police and prison staff are in high risk, stressful occupations and that they therefore need to be compensated for the risks they take. Evidence led at the arbitration revealed that 573 policemen had committed suicide between the years 1996 to 1999 (this is on average 22 times higher than in the civilian population). For workers in the police, prisons and health sector there had been an increase in workload due to expanded free health care services, rising crime, and a 'freezing' of posts.

Increases lower than the norm

The wage increases negotiated between NEHAWU and other health care institutions, for example Lifecare, Kenridge Hospital, Medscheme were between 7,5% and 9,5%. Furthermore (as a witness for the state conceded) the final demand of the unions was closer to the general level of wage settlements of 8,2% in the economy. Thus the wage increase of 6,3% was below the norm of wages increased for that period

Arms deal

The COSATU unions questioned the state's consistent application of its stated policy goals of reducing poverty in the light of the recent arms deal which would cost R29-billion. The COSATU unions argued that the state's suggested trade-off between conservative wage policy and social delivery could simply not be sustained in the light of defence spending. Furthermore, it was implausible for the state to seek to justify a failure to pay an additional 1% increase on the basis of the need to divert resources to social delivery purposes when resources of such magnitude had been found for purposes of dubious social value - the cost of these arms was approximately 125% the annual health budget.

Strikes - a weapon denied

Essential service workers are precluded from striking and thus could not exert pressure on the state by this means during the wage negotiations. If the essential service workers had gone on strike, services at the hospitals and security with respect to prisons would have been enormously jeopardised, and this may have influenced the state to consider granting a higher wage increase. Essential service workers who constitute a significant proportion of the employees covered by

the centralised bargaining arrangement and whose services are critical ('essential') could not bring their bargaining power to bear on the negotiations. The COSATU unions argued that the arbitrators should factor into their deliberations the fact that employees were denied the most important means of influencing the outcome of the wage negotiations.

Independent union arguments

During the course of the arbitration the independent unions supported the arguments presented by COSATU and advanced the following arguments:

Collective bargaining largely a sham

The independent unions argued that any agreement reached at the PSCBC was ultimately subordinate to parliament. It was therefore not possible for the parties to reach a genuine agreement in the PSCBC as the agreement relied on parliament's will for ultimate financial implementation. The independent unions argued that the state was duty bound to bargain collectively with the unions and failed to do so. The independent unions referred to relevant sections in the Constitution, the 1995 LRA and the PSCBC constitution which entitled the unions and encouraged or alternatively obliged the state as employer to engage in collective bargaining

Allocation for increase in public sector wages presented as a fait accompli

The independent unions made the point that the wage allocation (known as the Improvement Conditions of Service (ICS)) was approved by cabinet as early as September 1998 and this impacted on collective bargaining as the state was constrained to contain the wage increase within the parameters set by the ICS vote. The independent unions argued that the

reasonable needs of employees could not have been considered or taken into account, as there was no union involvement in arriving at the figure of R3-billion

State uncompromising

During negotiations the state adopted a rigid, inflexible and uncompromising approach. In this regard, the unions held that salary increases offered by the state were based entirely on macro-economic considerations and inflation targeting. The unions were critical of the state's implied assertion that the arbitrators were not competent to inquire into these policies as they fell within the realm of policy-making which was the prerogative of the government.

State could pay 1% increase

The unions argued, for example, that the South African Revenue Service (SARS) had collected revenue in the past five years in excess of R25-billion above target. Witnesses for the state conceded that the additional 1% could be found from available resources, but that it was a policy choice to reduce personnel expenditure in the public sector.

The state's arguments

During the course of the arbitration the state advanced the following arguments.

Macro-economic policy

The amount allocated by parliament is primarily a consequence of the application of macro-economic policy and the budgetary framework, which are not matters for collective bargaining.



Unions involved in non-essential services went on strike in 1999.

The state argued that it was duty bound to make choices about the distribution of resources, in a society such as ours where the needs of all South Africans (not only members of trade unions) were potentially limitless. Those decisions had to be guided by policy choices. Those policies had the endorsement of parliament and therefore (by implication) the majority of South Africans. The state argued that the goals of its macro-economic policy, best exemplified in GEAR, were the long-term growth of the economy, the elimination of poverty and the creation of jobs.

Collective bargaining process

The collective bargaining process in the PSCBC is subordinate to parliament's ultimate decision-making power. The state

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referred to various clauses in the Constitution, (pertaining to parliament, finances and public administration) and various statutes (such as the Exchequer Act, 1975, and the Financial and Fiscal Commission Act, 1997) which stipulate the processes of budgeting and allocating monies. The state argued that: 'The PSCBC cannot in law usurp the functions of parliament. Nor can the state abdicate its constitutional and statutory responsibility of developing fiscal policy, determining the budgetary framework, assisting parliament with the allocation of spending within the budget and implementing parliament's approved budgetary allocation...'

Final offer reasonable and fair

The state argued that 6,3% was a fair wage increase having regard to economic and fiscal policies, budgetary objectives, and employees' reasonable needs. Furthermore, the state argued that salary levels in the public sector compared favourably with various household income and subsistence levels

Public sector employees, so the state argued, are in the top 30% of all wage earners in South Africa. The state conceded that it could, at least in theory, always afford to pay more, by increasing taxes or increasing borrowings from other countries. The limits on government expenditure on wages had therefore to be determined by policy choices that government was required to make executing its duty to govern.

Reduce personnel expenditure

The state argued that it was necessary to contain wage increases in the public sector in order to increase non-personnel expenditure, especially infrastructure, to improve service delivery. The state pointed to the fact that between 1996 and 1999

wages in the public sector had increased by 48% while inflation for the same period increased by 31%. Furthermore, employees could now enjoy benefits like pensions and housing allowances available to employees previously denied during the apartheid years.

Sector differences

Collective bargaining in the public sector is fundamentally different from collective bargaining in the private sector. In the public sector the rationale for decisions are ideological, political and social, whereas in the private sector the rationale for decisions is profit driven. The state as employer in the public sector is required to be transparent and accountable in decision-making, and these characteristics do not feature in the private sector. The government (in contrast to the private sector employer) discloses the figure budgeted for annual increases and this figure is the mandate given to its negotiators and constitutes the opening offer tabled at the PSCBC. This 'showing of hand' significantly constrains the state during collective bargaining. (During private sector collective bargaining, trade unions do not know the employer's mandate.)

Some legal issues

The nature of essential services

The essential services include the South African Police Services, correctional services, the Department of Health, part of the Department of Welfare and a small section of the Department of Justice. Employees in these departments are prohibited from striking over matters of mutual interest because the nature of their work is of great public importance. In exchange they have the right to compulsory arbitration over matters of mutual interest.



Nurses are precluded by law from striking.

Arbitration in terms of the LRA

The arbitration was held in terms of section 74(4) and (5) of the 1995 LRA. Because essential service workers are precluded from participating in strike action they may, after referring the dispute to the council or CCMA for conciliation (and conciliation fails), refer the dispute to arbitration.

Any award made which has financial implications for the state requires parliamentary approval to make the award binding. If parliament decides to pass a resolution that the award is not binding the dispute must be referred back for further conciliation and arbitration if necessary. Because the award made by the arbitrators was in the state's favour, ie the arbitrators found that the state's implemented wage offer of 6,3% was fair and reasonable, the award did not have to go to parliament for their approval.

Award and reasons

The arbitrators found that the state's reliance

on its macro-economic policies, most expressly exemplified in GEAR, to justify its approach to collective bargaining was appropriate and that the implemented wage increase of 6,3% was fair.

Furthermore, the arbitrators found that 'the legal constraints on collective bargaining created by [the] parliamentary process did not undermine the employees' right to collective bargaining nor did the budgetary process make the outcome of collective bargaining unfair'.

Implications for unions

It may be desirable for collective bargaining to happen at the same time as or preferably before the budgeting process

For the unions, the agreement reached could then be included in the budget. The advantage for the state would be that it would not be required to show its hand during collective bargaining. However, it would be unreasonable to, as it were, hold the state to ransom by prolonging collective bargaining (or instituting strike action or participating in an arbitration), and thereby delaying the conclusion of the budget.

The state's key argument (approved by the arbitrators) concerns its macro-economic policy which justified its wages in the public service. Accordingly, if the trade unions want a better wage deal for their members it makes some sense to challenge those policies. The labour movement needs to assess the efficacy of arbitration in terms of section 74 as a substitute for the right of essential service workers to strike in support of salary demands. ★

Dawn Norton and Randall van Voore are attorneys at Cheadle Thompson & Haysom