

Falling through the cracks

City of Cape Town ditches health and safety duties

People will be shocked to find out how the City of Cape Town seriously neglects the health and safety of a large part of its workforce. **Nick Henwood, Richard Jordi and Nomakholwa Makaluza** tell how labour broking erodes municipal workers' rights.

During 2005 and 2006, the Industrial Health Resource Group (IHRG), the South African Municipal Workers Union (Samwu), and the Municipal Services Project (MSP) carried out a research project into the health and safety conditions (OH&S) of municipal workers in the electricity, solid waste and wastewater departments of the City of Cape Town (CCT).

The aim of the project was an audit of the health and safety practices and systems in the three municipal departments. IHRG facilitated the research, and 30 shop stewards and health and safety representatives (H&S Reps) selected by Samwu participated in the project.

The Samwu participants engaged with the employer. This initially involved them in negotiating for access to depots and information. The CCT refused to provide information and access unless Samwu agreed not to publish its findings without its approval. Samwu shop stewards and H&S Reps identified hazards in their depots as well as the employer's Occupational Health & Safety Act (OHSA) contraventions. They used their research findings, including digital photos, in workshops and general meetings to discuss health

and safety dangers and problems.

Project participants discussed with depot managers the election of H&S Reps, workplace inspections, incidents (accidents or dangerous exposures defined in OHSA) and protective measures. Samwu delegations also met with the CCT senior departmental management to present their findings and demands regarding the CCT's and sub-contractors' non-compliance.

To ensure accountability to Samwu a Reference Group was set up consisting of Samwu Cape Town Metro office bearers, shop stewards from the three departments and representatives of IHRG. The project experience gave Samwu a huge learning experience around its capacity for organising workers and defending OH&S rights.

LITANY OF NON-COMPLIANCE

More than 4 million people live in the CCT. It is also the workplace of 20 000 municipal employees who provide services to the population. We rarely consider how the nature and quality of the work experience of municipal workers is part of the quality of service delivery.

This project exposed many instances of legal non-compliance by the employer and that little is operating in terms of preventive

practices of OH&S. The initial findings from workplace inspections, listed 60 hazards that workers are exposed to. It is not surprising that three workers died during the 18 months of the project. A solid waste collector was killed by the loading mechanism of a refuse removal truck; a woman salvager was crushed by a compactor truck at the Vissershok Landfill site; and a worker in a sub-contracted asbestos removal company fell to his death at the Athlone Power Station.

The project revealed that the CCT does not take responsibility for ensuring OH&S standards through sub-contracting and outsourcing municipal services. It showed hostility towards workers' rights and the critical voice of unionised workers. These are not narrow workplace issues. They raise wider questions relating to service delivery, governance, equity and health in the municipality. How can the CCT claim to practice democratic governance for its citizens when it denies the health and safety rights of its workers?

The CCT contravenes its legal responsibilities and undermines the rights of employees in a number of ways. It refused to supply the union with information relating to OH&S, in contravention of sections of the



OHSA and the LRA. Senior management claimed ignorance of employees' conditions. This conflicts with employers' obligations under OHSA to be aware of hazards "in his business" in order to establish precautionary measures.

The CCT sanitation area manager was invited to attend the second general meeting of the Klipfontein depot bucket workers. He responded, "I am surprised to hear these reports, and find the health and safety situation (on the digital photos) unacceptable."

This was also expressed by senior CCT management who were shown photos of findings by a Samwu delegation while they undertook the investigation.

The project also identified the CCT's failure to establish OH&S structures, systems and procedures in consultation with employees' elected H&S Reps and in negotiation with the representative trade unions. Project participants in introductory training workshops in February 2006, as well as in workplace visits, found that the CCT exercises control over OH&S representation, structures, procedures, systems, and training, leaving no space for independent worker representation or critical union involvement. This

contravenes the requirement in OHSA (General Administrative Regulation) for the employer to enter into negotiations with representative trade unions.

There was however one particularly alarming trend. The research revealed the extent to which basic OH&S standards, and workers' rights to a healthy and safe workplace, are undermined through the CCT's outsourcing of services, and its failure to ensure legal compliance with OH&S legislation and regulations in its contracts with sub-contractors and labour brokers.

CASUAL WORK IN CCT

The CCT uses labour broker contract workers in order to reduce the cost of labour, divide and weaken unionised permanent municipal workers and to circumvent labour regulations.

The CCT management refused to provide Samwu with figures of the number of permanent, labour broker contract, public works, casual, and sub-contracted employees. They also declined to provide copies of contract clauses between CCT and labour broker agencies around arrangements for basic conditions of employment and OH&S. Project participants' undertook their own investigation

and found that outsourced, or non-permanent employees, constitute 27% of workers in the departments. Casual or labour broker workers made up 19% of the workforce. The highest percentage was in the solid waste department.

By using contract workers, the CCT contracts out of human resource responsibilities. This includes the administration of employees' salaries, sick leave, annual leave, employment contracts, tax, UIF, skills levies, Compensation Fund contributions and benefits. It relocates disciplinary procedures and management of employment contracts with the labour broker who has no knowledge of the employees' work environment. This creates a situation where significant employer legal responsibilities around every labour related legislation are circumvented by the CCT and the labour broker.

FALLING THROUGH THE CRACKS

The CCT uses contract workers to address short-term seasonal fluctuations and permanent workforce absenteeism. But we also came across contract workers with long service in the CCT. We found contract workers who were dismissed from permanent jobs in the CCT and then re-employed to do the same work in the same depot. Casuals told us that they worked without annual leave or wage increases.

Contract employees are exposed to the same health and safety hazards as permanent workers. However, they fall between the cracks created by their two "employers". While the labour broker is responsible for human resource management including contributions to the Compensation Fund, the CCT is responsible for these workers' OH&S. The OHSA excludes labour brokers from the



Visserhoek landfill site

definition of an “employer”. So the labour broker has no responsibility for OH&S conditions.

However, the CCT does not see contract workers as its employees and so neglects legal responsibility. At a Visserhoek Landfill Site meeting in August 2006, the CCT head of OH&S argued that, “contract workers should have their own set up which could include the labour broker as their employer... (where)... the broker must have a site supervisor or must make arrangements with the CCT on their role in OH&S.”

With regard to the broker’s responsibilities to administer compensation claims, its employees allege that occupational injuries do not receive sustained administrative or logistical support from the labour broker in processing their temporary total or permanent disability lost wages or compensation payments.

This neglect is partly a result of the Coid Act (Compensation for Occupational Injuries & Diseases) which only requires the employer to take responsibility for temporary total disability lost wages for three months. The Act is silent on the employer’s responsibility to process workers’ medical reports and compensation claims for the period of the temporary disability. The law also fails to establish employer responsibilities on concluding permanent disability claims.

The vulnerability of contract workers is increased by the fact that the broker can end an

employment contract on the basis of ill health or injury incapacity without having to follow LRA Schedule 8 guidelines. The broker has no interest in ensuring that an injured worker receives rehabilitation because they have not invested in the worker’s skills development and benefits.

By sub-contracting human resource management responsibilities to labour brokers for a significant number of workers, the CCT circumvents LRA incapacity dismissal guidelines that pressurise the employer to find alternative employment for workers with occupational incapacities.

The CCT’s use of brokers undermines an important principle in the Coid Act – that employers with hazardous workplaces contributing to occupational injury and disease claims must pay increased premiums. Where a contract worker has an occupational injury or disease, the CCT employer is not forced to pay increased premiums. This is because the increased premiums are carried by the labour broker who has no responsibility for the workplace in which the incident occurred.

When the CCT hires labour broker casuallties, it has the responsibility under the OHSA to identify, prevent and control workplace hazards, and to provide preventive measures, information, training, and supervision for all workers. The OHSA also states that the employer may not permit a worker to work unless preventive

measures are in place.

Based on the occupational hazards identified in the departments and following a range of regulations under OHSA, the CCT’s responsibilities would include undertaking risk assessments, implementing preventive measures, providing labour broker casuallties with Personal Protective Equipment (PPE) “free of charge”, providing medical surveillance, ensuring workers’ representation by elected H&S Reps and providing workers with OH&S training.

However, we found that there is no supervision with regard to casuallties’ OH&S needs. Nor does the CCT oversee basic conditions of employment. This includes a failure to provide any PPE, information, training and H&S representation. As contract workers said, “No inspector, no supervisor. Who is the manager of buckets?”; “We don’t know who the managers are.”; “When Council workers go for injection, ZZ (not real name of broker) workers are asked to stay back.”; “I took my money to buy my own rain suit.”; “We can wear the same paper mask here for three months.”

Under GAR, the CCT also has the responsibility of reporting, investigating and recording any incidents in which *all* workers are involved. The employer must include an H&S Rep in the investigation and must conclude investigations “within the contracted period in the case of

contracted workers.”

Where union organisation and elected H&S Reps participate in incident investigations they can achieve real gains for workers. They improve the quality and thoroughness of investigations and they can identify the causes of incidents and exposures and engage the employer on improving preventive measures. They can also involve workers at risk of exposure or accidents to improve the preventive OH&S culture. And where investigations show that employer non-compliance or negligence contributed to incidents, unions can take steps to ensure that the worker with an occupational disease or injury, and the family of a deceased worker, can benefit from increased compensation.

The Samwu researchers found that the CCT was not complying with incident investigation procedures and disregarded the rights of permanent and contract workers. Incidents involving contract workers were not reported or investigated by the CCT. Injured casuals were immediately removed from the contract and managed by the labour broker.

Contract workers explained that injured workers neither received temporary disability wages nor did they get compensation for the full period of their work absence. These workers associated incidents and temporary disabling with dismissal by the broker. In one case, a contract worker's family was denied access to the broker's additional insurance cover because the employer failed to report and monitor his absence from work following a work injury.

ERODING ALL WORKERS CONDITIONS

The power of permanent workers to bargain with the employer and to monitor and enforce labour

rights is weakened by the use of casual labour in municipal services.

The project found that contract workers' low wages, insecure employment, the neglect of decent working conditions, absence of benefits, a lack of supervision including of employment contracts, absence of preventive measures and violation of OH&S laws and regulations, and employer neglect of injured broker employees, constituted extreme forms of employment abuse.

Broker employees do the same work in the same depots as permanents so this abuse of their rights increases the risks facing all municipal workers.

CHALLENGES FACING SAMWU

Samwu faces important challenges in addressing the outsourcing and casualisation of workers in the CCT. These include:

- Overcoming divisions within the

workforce.

- Organising broker casuals and addressing labour rights.
- Getting the CCT to negotiate minimum conditions of employment and maximum periods for which casuals can be employed before becoming permanent.
- Establishing negotiating and consultative forums in which the OH&S conditions and rights of *all* workers are monitored, evaluated and addressed.
- Negotiating worker OH&S representative rights including election procedures, training and access to resources for H&S Reps.

The challenges for Samwu are not only about the impact of labour broker casualisation. There are also significant organisational, enforcement, capacity building, and legislative challenges arising from the project's findings.

Labour broker workers speak

“I work on top of the truck. As I throw buckets off, the driver does not drive slowly or steadily. I have no harness.”

“I have worked on this contract for eight years without leave.”

“Some workers want to know what is going on. We had no increase for three years.”

“If we work on Sunday or other public holiday we don't get paid correctly.”

“Up to date this incident were not investigated by the employer... The H&S Reps at this depot tried to do some investigation but to no avail due to their non training on investigations. The employer at this point in time had not done any investigating on any incident or accident that had occurred in this depot. Today the contract employees' services were terminated and out of them three had accidents which were never investigated.”

“Someone fell from the truck and broke his ribs whilst we were washing buckets in 1999. He was off work for two weeks - no wages. The manager did not report the accident. Council paid the doctor. Management said if he does not come to work no money no work.”

“Every December it is dangerous for our safety to work in KTC... He was shot in the hip in 2003. He was six months off from work but only got two weeks pay.”

These challenges face the entire labour movement to defend, enforce and extend OH&S rights. Union implementation and defence of rights is a critical contribution to the ongoing struggle against deterioration of work conditions, the casualisation of labour and the deregulation of the labour market.

Samwu, with other unions, needs to:

- Ensure that employers comply with the OHS Act and Covid Act in order to build a preventive culture.
- Develop OH&S capacity amongst Samwu shop stewards and officials.
- Set minimum training standards for elected H&S Reps who must undertake functions prescribed in OHS Act and effectively represent workers who elect them.
- Train shop stewards and officials to enforce OHS Act including undertaking workplace inspections, audits and incident investigations.
- Ensure that incidents are investigated by H&S Reps.
- Identify weaknesses in the Covid Act and advocate through tripartite OH&S forums for amendments to laws informed by workers' experiences and needs.
- Engage the Department of Labour around capacity building problems facing its H&S inspectorate.
- Ensure that employers who contravene the OHS Act are charged in accordance with the Act's offences and penalties clauses.
- Review penalties for contravening OHS Act.
- Develop and advocate a preventive OH&S culture driven by workers' health needs and rights for a healthy and safe work environment.

Above all else, the findings of this project highlight the need for

organised municipal workers to examine how outsourcing, casualisation and privatisation are accelerating the deregulation of labour rights, creating divisions amongst workers and impoverishing the quality of municipal services delivered in their own communities. Samwu is well positioned to make a meaningful contribution to the national crisis in local government service delivery

by identifying how this is made worse by the deregulation of workers' employment conditions. ^{LB}

Nick Henwood, Richard Jordi and Nomakholwa Makaluza work with the Industrial Health Research Group. They worked with participants from the Samwu Cape Metro Branch in the Samwu/MSP/IHRG Occupational Health & Safety Research Project.

Saga of neglect

Jan Bloem (not real name) is 34 with six children and is cared for at home by his wife after sustaining head, upper and lower limb injuries in an incident at work. Janine Bloem says that she cannot work because her husband is now her seventh child.

Jan worked in the same job for nine years. First as a permanent worker in the CCT solid waste department until he was dismissed. Soon after, he went back to the same job in the same depot, but as a casual with a new employer. ZZ Labour Brokers hired him on a temporary contract. He earned R11 per hour and had one benefit – the broker's compulsory insurance cover with a maximum permanent disability payout of R25 000. Jan paid R4 a week for this benefit but he had no copy of his policy. He worked as a casual broker employee for a year until he fell from a truck and was run over by the rear wheels.

A project participant found Jan in his Bonteheuwel backyard two years after the accident. He cannot feed, wash or change himself. He is unable to count or know the value of money... The family survives on child support and disability grants. He had not received temporary disability payments from the Compensation Commissioner for 20 months. His employer only submitted his Covid Act claims for the first three months and then left him to survive on his own.

A year after the incident, the Compensation Commissioner paid Jan a total of R4 306, the equivalent of three months temporary total disability. The doctors declared him "permanently unfit" for work in August 2005, but there was no employer to process his claims for permanent disability.

The labour broker also failed to report his disabling injuries to the insurance company and he has never received insurance benefits for which he paid. When Samwu challenged ZZ on the payments, they said that they had no information about his permanent disability and it was too late to claim because his policy had lapsed when he stopped working.

It was only after the project's intervention that Jan secured his outstanding 21 months temporary total disability payments from the Compensation Commissioner. Currently Samwu and IHRG are working to finalise his permanent disability claim.