

Local government

privatisation through the back door

On 30 June 1997 the South African Local Government Bargaining Council (SALGBC) agreed that delivery of basic services should remain the responsibility of local government and that local government's capacity to deliver should be developed before Public Private Partnerships (PPPs) or any other form of privatisation is considered. The SALGBC is made up of the South African Local Government Association (SALGA), the Independent Municipal and Allied Trade Union and SAMWU. Underlying this agreement is the belief that, historically, the public sector has delivered efficient and affordable basic services, and is in the best position to address apartheid legacies in a sustained manner in line with the RDP. The agreement was also designed to ensure that local government does not renege on its responsibility to the electorate by just opting for privatisation.

About turn

Despite this agreement, the Tygerberg municipality in the Western Cape unilaterally went ahead and privatised refuse removal in Khayelitsha. The Billy Hattingsh Refuse Removal Scheme (BHRA) was awarded this contract on 3 November 1997. The contract will last for five years

BHRA

In terms of the contract, 'entrepreneurs' are identified within the community. The

A number of municipalities have reneged on an agreement with SAMWU not to privatise basic services. Maria van Driel reports on the steps the union is taking to ensure that service delivery remains in the public domain.

entrepreneurs, at their own expense, subcontract a number of people identified by BHRA to provide services. Control and decision-making remains with BHRA. The contract is between BHRA and the 'entrepreneurs' who must supply and maintain the service at their own expense, including all machinery, equipment, vehicles, tools and insurance (including municipal cover).

The municipality pays the entrepreneur a monthly amount of R8,60 per residential unit serviced. While the entrepreneur and the subcontractors do the work, the municipality also pays BHRA a sum of R2 800 per month per entrepreneur. This amount is increased annually, as determined by BHRA.

Conditions

No employment conditions are specified for the subcontracted workers except that



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The public sector is in the best position to deliver basic services.

their remuneration is determined by BHA. Wages appear to be low. Benefits are completely absent and no provision is made for protective clothing. There is no way of enforcing payment of even the minimal amounts that BHA decides the subcontracted workers should earn. Workers are exposed to ultra exploitation - the main concern of COSATU's struggle against labour flexibility and downward variation. BHA is based on exploiting the vulnerability of desperate, unemployed people. While the subcontracted workers are at the mercy of the 'entrepreneur', the latter are also exploited and, according to the contract, are responsible for possible risks encountered.

The municipality is marketing the exercise as 'black empowerment' and 'community empowerment'. The fact is that, while it is busy being fleeced by BHA, there is no guarantee of service standards,

effectiveness and efficiency, to historically disadvantaged townships. It is no coincidence that this scheme is being implemented in a black township. The municipality has no control over the service. It is simply shirking its political responsibility to communities.

BHA is also operating in Kimberley and recently tendered for a project in Newcastle, KwaZulu-Natal.

Community divided

Tygerberg municipality went ahead with the scheme despite SAMWU's attempts to meet it and despite requests for a moratorium on privatisation. The scheme, and the union's opposition to it, has led to enormous tensions within the community and between the community and SAMWU/COSATU. While union members opposed privatisation, unemployed community workers welcomed it as a job opportunity.

This is perfectly understandable, given the mass unemployment within the township.

A potentially explosive situation arose on the day the scheme started. Workers refused to allow BHA, which was accompanied by a large police contingent, to use the municipal depot. As a result of the ensuing confrontation, a councillor was injured and five SAMWU workers were jailed for almost two weeks before they were provided with a bail hearing. The trial is still pending. SAMWU workers have also been (indefinitely) interdicted to remain outside the physical environs of the project.

The union has since been vilified by sections of management, the media, and some councillors. The issue of the municipality imposing privatisation even if it tears communities apart, is deliberately ignored.

Arbitration award

To enforce the SALGBC agreement, SAMWU was forced to take the matter to arbitration. On 18 February 1998, the CCMA, made the following award:

- ☐ Tygerberg's privatisation of refuse removal is a unilateral change in the terms and conditions of employees' engaged in refuse removal in Khayelitsha
- ☐ This is an unfair labour practice.
- ☐ The SALGBC agreement of 30 June 1997 was breached.

Victory

The CCMA award is a victory for SAMWU and the community in many respects. For one, all members of SALGA are bound by the SALGBC. Decisions cannot be undermined by individual local authorities. This potentially strengthens the bargaining council as an effective bargaining instrument.

Secondly, it acknowledged as unfair

labour practices, any practice that results in the unilateral and (adverse) changing of workers' employment conditions.

Thirdly, the award upholds the substance of the SALGBC decision to seek public sector solutions to service delivery. The award also states that, although municipalities must provide communities with sustainable services, this is not "a licence for local authorities to privatise". Up to now this has been the case.

Review

In line with its practice of undermining the SALGBC agreement, Tygerberg has applied for a review of the arbitration award in terms of the LRA (Section 145 (2a)).

This section provides that if a CCMA commissioner committed misconduct, gross irregularity or exceeded his/her powers, the award may be overturned. The review hearing will take place on 20 May. Until such time as the matter is decided, the privatisation scheme is allowed to continue. This is despite the fact that SAMWU members have been called in to assist with refuse removal as the scheme was not coping. BHA is currently preparing to extend the scheme.

Emergency plan

In the meantime, the COSATU local in Khayelitsha is developing an emergency plan, spear-headed by SAMWU. The aim of the plan is to improve and extend the service, together with the community. The plan is based on workers restructuring the workplace and bringing about an immediate improvement and extension to the service.

In some cases this will include workers using their own resources to assist the community with service delivery. The plan also includes community awareness raising and 'clean-up days'.

Further violations

The 1997 agreement is being undermined by many municipalities. Two recent examples are:

- ❑ The Matatiele municipality in KwaZulu-Natal, which proposes to privatise all its services and reduce the workforce from 154 to 15
- ❑ The Dolphin Coast municipality, also in KwaZulu Natal, which announced on 5 May that it will contract its water services to a French multinational, Societe d'Amenagement Urbain et Rural (SAUR), for the next 30 years. Both the Department of Constitutional Development (DCD) and the Development Bank of South Africa, were involved.

The Dolphin Coast municipality's unilateral action is also a contravention of the Water Services Act 1997 19 (2) on Contracts and Joint Ventures.

The Act states that local authorities need to first consider public water providers before seeking partnerships with the private sector. Despite the fact that the Umgeni Water Board, which is a public company, tendered for the contract, the municipality went ahead and awarded it to SAUR.

DCD's role

While the White Paper on Local Government recommends building the public sector as a service provider, the DCD seems to favour privatisation, particularly in the form of PPPs. This is, of course, in line with government's macro-economic strategy, GEAR.

When SAMWU informed the DCD of the outcome of the Tygerberg arbitration, Minister Moosa said the award was 'problematic' as it undermined Tygerberg's constitutional right as a municipality. The minister was not concerned that labour's constitutional rights were being

undermined. Instead, he went on to say that he supported Tygerberg's review of the award and indicated that he intends giving the municipality a supporting affidavit. This will clearly encourage municipalities to renege on collective agreements, and generally undermine the SALGBC.

At the moment, SAMWU is devoting its resources and energy to getting municipalities to uphold agreements. This time could be spent on restructuring the workplace to effect improvements and extend service delivery.

We appeal to Minister Moosa to put a moratorium on all privatisation in line with the SALGBC decision. Collective bargaining agreements are protected by the constitution.

We also request Minister Moosa to monitor and enforce the drawing up of Integrated Development Plans (IDP) as per the Local Government Transitional Act (1993) and the White Paper on Local Government.

The DCD guidelines on PPPs also need to be strictly enforced, developing public sector options together with communities and labour, amongst other stakeholders, before engaging in PPPs as a last resort.

This will ensure that municipalities plan strategically on the basis of communities' needs, with the democratic participation of labour and communities.

Services will descend into chaos if privatisation is allowed to take a hold. The BHA is but a microcosm of the problems we will be forced to deal with.

We invite Minister Moosa to participate with SAMWU in building the public sector, based on our members' emergency plan (22 May 1998) ★

Maria van Driel is the SAMWU anti-privatisation campaign co-ordinator