

Negotiations in the public sector

What went wrong?

Trade unions in the public sector spent almost eight months at the bargaining table. After striking for a month, questions are now beginning to surface on the unusually long duration of negotiations. **Woody Aroun** and **Azad Essa** spoke to Shireen Pardesi, chief negotiator for the South African Democratic Teachers Union (Sadtu) and Shamira Huluman, general secretary of the Public Service Coordinating Bargaining Council (PSCBC) about the strike and its aftermath. Alistair Smith, chief executive officer of the Metal & Engineering Industries Bargaining Council (MEIBC) also shares his views on the negotiations.

INTERVIEW WITH SHIREEN PARDESI, CHIEF NEGOTIATOR FOR SADTU

Tell us about the procedures and processes in the PSCBC, the time period set aside for negotiations – from the point of tabling demands to offers, counter offers and so on.

The previous agreements in the PSCBC were multi-term, three year agreements. So after the lapse of three years unions immediately table their new set of demands with a specified time frame for negotiations.

In real terms the agreement of 2004 lapsed in July 2006. Unions immediately consolidated demands and submitted in October 2006 with a time frame of completion in February 2007. The state has to respond within 21 days of the item being placed on the agenda after which parties exercise their right to deal with the issue appropriately. In so doing parties could also by agreement decide on the time frame.

In the last round the state indicated that they would be responding in January 2007 with the offer but failed at the time. They responded in January 2007 without an offer, came back in February 2007 with the first offer which clearly lacked detail. Hence the process dragged on.

Unions claim that they spent almost eight months negotiating at the bargaining table. This is an unusually long period of time. Why did the parties spend such a long time at the bargaining table?

The long drawn out negotiations were as a result of the state not being clear on the detail they included in the offer. In the process of a response the state wanted to address the issue of professionals within the public service for purposes of recruitment and retention. That principle was accepted by the unions but they demanded the detail. In that time

the state started to attach detail through ongoing preparation. The delay was hence inevitable.

In order to heighten pressure unions went the route of declaring a dispute to speed up information. There was clearly no disclosure from the state to the council or the public that the delay was as a result of their inability to provide information, detail!

Do you think that the procedures and processes set out in the PSCBC are adequate to deal with negotiations of such magnitude or should there be some amendments to ensure that there is greater clarity of purpose and a speedy resolution of issues. What strategies can the unions use to improve the bargaining process?

The processes set out by Council are clear and can work. If the issue in the above question was adequately addressed it would not have been difficult to conclude an



Shamira Huluman, general secretary of the Public Services Coordinating Bargaining Council

agreement within the time frames.

The other issue for consideration is the number of unions in bargaining, together with the number of representatives from each union. The complications are as follows:

There are eight unions with a delegation from each between three and five bringing it to a total of 45. The representatives from each vary in degrees of capacity with some being totally incapacitated. Certain unions will raise sector specific matters despite the existence of their own sectoral councils which are failing to conclude agreements. There is clearly a lack of understanding on what constitutes matters that are transverse and those that are sector specific.

There were moments when certain unions through their representatives became personal and selfish and succumbed to the pressures from the state.

The following can be done: The

threshold to admit parties in a large council like the PSCBC must be increased from 50 000 to at least 100 000. This will ensure that unions with a membership of more than 200 000 are afforded the respect to bargain alongside unions of similar size. For a union with a membership of 200 000 to have the same status as those with less than 100 000 is problematic. The negotiators from each of the unions should be sufficiently skilled in dealing with issues appropriately and in the correct forum. The size of the team should be a maximum of ten. There cannot be 45 people bargaining with each wanting an equal voice.

The minister claims that the unions have only been focusing on the wage offer, and not the whole package. What is your response to this?

The minister was clearly misled by her own team. She, in her internal circle, knew the package but that

knowledge was not shared with the unions up until the last week of the process. If the information was timeously shared it would have been in the interest of parties to consider and comment. Unions were up front about the fact that the state's offer lacked detail. So the minister is certainly claiming false victory over the package issue.

Finally, do you think that the unions have been out manoeuvred by Minister Fraser-Moleketi or can the unions truly claim that the strike was a victory?

My response will be twofold. We were not out manoeuvred because the state believed the strike would not take off and if it did, it would not last more than two days. The duration of the strike created serious problems for the state. The anger from employees, be it essential or non-essential, created massive fronts of intimidation. Unions moved the state from a 4% to 7.5% basic increase outside of other benefits.

The agreement also included a "return to work" addendum as well as a framework to conclude a "minimum service level agreement".

The unity of all unions was by far the greatest victory. To unite 17 unions across different sectors with each having their own sectoral views was no mean task.

The converse is that the length of the strike created divisions resulting in certain categories returning to work. The level of militancy, if prolonged, could have been counter productive. Settlement was not a product of bargaining but one of political intervention - hence its implications for collective bargaining as a whole.

INTERVIEW WITH SHAMIRA HULUMAN, GENERAL SECRETARY OF THE PSCBC

Tell us briefly about the procedures and processes in the PSCBC, the time period set aside for negotiations – from the point of tabling demands to offers, counter offers, and so on.

Clause 16 of the PSCBC constitution provides for a negotiating procedure on matters of mutual interest. This procedure provides that the parties have a period of 21 working days to conclude the bargaining process or “such a period as agreed between the parties”.

It further states that should the matter not be settled in this timeframe or there is no agreement on the extension of the time period, any party may refer the matter for conciliation in terms of

dispute resolution procedures. Clause 16.3 also provides for parties to agree on the negotiation process which includes submission of counter proposals, establishment of a negotiation committee, appointment of one or more facilitators to chair meetings and a timetable for negotiations.

Unions claim that they spent almost eight months negotiating at the bargaining table. This is an unusually long period of time. Why did the parties spend such a long period at the bargaining table? Who is to blame?

In this round unfortunately parties did not apply their minds to the above provisions seriously. Although labour submitted a timetable for negotiations this was not accepted by the employer. The length of the negotiations was extended by

agreement of the parties by virtue of them agreeing to further dates.

Do you think that the procedures and processes set out in the PSCBC are adequate to deal with negotiations on such a large scale or should there be some amendments to ensure that there is greater clarity of purpose and a speedy resolution of issues?

I do believe that Clause 16 adequately covers the issue of time frames and allows parties to agree on a procedure. We must bear in mind the parties are jointly the architect of the constitutional provisions (including the negotiation procedure and dispute resolution procedures) as they are collective agreements of the bargaining council.

Both parties are also in control of the processes in the Council and unless there is agreement on both sides, as a general secretary I cannot impose processes or procedures onto them.

The PSCBC and Public Service Commission (PSC) convened a conference in March 2007 to look at mechanisms to improve compliance with procedures and settlement of disputes. What were the outcomes of this conference and will the strike have any effect on these outcomes?

The aim of the conference was to provide a platform for the stakeholders in the public service to hear independent researchers and experts on issues of social dialogue, dispute resolution and prevention strategies. Due to the wage negotiation process and the strike, the report of the conference has not been finalised. The intention was not to come out of the conference with a set of resolutions, but to create a platform



Shireen Pardesi, chief negotiator for South African Democratic Teachers Union (SADTU)

“Keep the wage bargaining agenda fairly short!” Roger Ronnie (South African Municipal Workers Union)

for engagement and debate on issues of collective bargaining and dispute prevention strategies. The two institutions, PSCBC and PSC will be holding follow-up round table discussions on some of the issues arising from the conference to chart a way forward.

Are there any strategies that can be implemented to improve the bargaining process?

Yes! I believe that the lessons learnt from the strike will feature in this round table discussion and parties can then consider possible constitutional amendments and dispute prevention strategies.

Obviously, the right to strike is an important element of collective bargaining and cannot be ruled out in future negotiations, but are there mechanisms that the PSCBC can use to minimise this threat?

Yes. Definitely! PSCBC in hosting the conferences and organizing other events outside the bargaining environment allows parties to debate issues and to develop new ways of engaging with each other, including strike avoidance and dispute prevention strategies.

As the general secretary, what steps will you take to heal the wounds that have been caused by the strike and to rebuild relationships that have already become strained?

The PSCBC to date has initiated various dispute prevention strategies, including facilitating the parties to agree on “Rules of engagement” namely a Code of Good Practice on Bargaining which emphasises a more mutual gains approach. This was agreed to as far back as 2002. Unfortunately in all

bargaining councils, negotiators change and so does strategy and approaches.

Other forms of dispute prevention strategies is ongoing capacity building initiatives funded by the Council such as negotiations skills training, dispute resolution skills-conciliation and arbitration training and so on.

Post this strike, the intention is to propose to the parties a Post Bargaining Strike Review to allow the parties to jointly engage in a review process, without allowing them to point fingers at each other, and analysing the lessons learnt. I

will also suggest an RBO (Relationship Building by Objectives) exercise to enhance the relationship amongst negotiators and build trust. These suggestions are yet to be made to Council and subject to their endorsement. LB

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COMMENTS BY ALISTAIR SMITH, CHIEF EXECUTIVE OFFICER, METAL & ENGINEERING INDUSTRIES BARGAINING COUNCIL (MEIBC)

What struck you most about the recent public sector strike?

There are four things that struck me. Firstly, the negotiations stretched over a long period of time. Eight months of negotiation and then strike action. I fail to understand why the negotiations were allowed to drag on for so long. In the metal industry we took two months for our negotiations, including our strike action. These two months saw us meet 24 times. It was a very intensive process.

Secondly, I was struck by the government negotiators' use of the tactic of issuing ultimatums. Making an offer conditional is always a risky approach. If you remember, the government negotiators issued an offer and gave unions two days to respond. This tactic was a favourite of employers in the eighties and can be very dangerous. In the MEIBC we have reached a level of maturity in our relationship such that we try to avoid the use of provocative tactics. While I have no doubt that sometimes parties are tempted to be provocative we actively discourage this from a facilitation and process point of view.

Thirdly, there was a struggle to get negotiations back on track. At some point it was almost like having negotiations about negotiations. In our experience the parties need to be in constant conversation, and do not walk away from the bargaining table. This is crucial.

Lastly, the public sector negotiations reminded me of the type of adversarial relations that we had in the eighties, when it was all about power play. In the metal industry we acknowledge that adversarial relations still exist, but our process is actively designed to absorb this. While our methods are by no means perfect, parties know that ultimately we have to work together and relationships need to be kept intact at the end of the process.