

Right to strike in Zimbabwe

Public sector employees fight on

Zimbabwe's laws have for a long time not recognised the right to strike but this is soon to change after the adopting of a new constitution in 2013. **Zakeyo Mtimtema** explains how this is unfolding.

Zimbabwe's public sector labour legislation is fragmented. It is divided into seven segments but the majority of employees fall under the ambit of the Public Service Act Chapter 16:04 and the Public Service Regulations Statutory Instrument 1 of 2000. Other employees are regulated by the Labour Relations Act Chapter 28:01, the Health Services Act Chapter 15:16, the Police Act Chapter 11:10, the Defence Force Act Chapter 11:02, the Prisons Act Chapter 7:11 and the Judicial Service Act Chapter 7:18. What is significant to note is that these legislations combine both administrative functions and labour relations. The fragmentation of labour laws indicates a divisionism approach in the public service.

What is clear from all the above legislation is the fact that the right to freedom of association and collective bargaining in the public sector is limited except for those covered by the Labour Act Chapter 28:01. However, we conclude that legally, the majority of public service employees now have a guaranteed right to strike in terms of the constitution, with the exception of the army, police, and prison forces, and employees in essential services.

PRE AND POST-COLONIAL LAWS

Zimbabwe was a British colony for 100 years – from 1890 to 1980. It got independence on 18 April 1980. During the colonial era, public service employees were governed by the Civil Service of Rhodesia Ordinance 6 of 1898, which established the Civil Service of Rhodesia. The ordinance did not provide for the right of employees to freedom of association, collective bargaining and to strike. Conditions of service were determined by the master and employees had no right to strike. In 1901, the Master and Servants Ordinance was enacted to cater for all employees both private and public service. The ordinance also did not provide for the right to collective bargaining and to strike.

The Old Constitution of Zimbabwe (SI1979/1600 of United Kingdom) provided for the establishment of the Public Service for the administration of the country (s73) and the Public Service Commission (s74) whose functions are to tender such advice and do such other things in relation to the public service. The constitution provided for the right of every person to form, join and associate or disassociate. However, the constitution did not directly provide for the right to

strike but it was implied under freedom of association, assembly and expression.

RIGHT TO STRIKE IN NEW CONSTITUTION

Zimbabwe adopted a new constitution on 22 May 2013 (Constitution of Zimbabwe Amendment Act 20 of 2013). The new constitution now provides for the right to strike except for members of the security services. Section 65(2) provides for the following fundamental rights:

- Except for members of the security services, every person has the right to form and join trade unions and employee or employers' organisations of their choice, and to participate in the lawful activities of those unions and organisations.
- Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, and withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.
- Every employee is entitled to just, equitable and satisfactory conditions of work.

- Except for members of the security services, every employee, employer, trade union, and employer's organisation has the right to engage in collective bargaining, to organise and to form and join federations of such unions and organisations.

The new constitution marks a great departure from the old constitution that did not directly provide for the right to collective bargaining and to strike.

LABOUR ACT

The Labour Act Chapter 28: 01 covers employees in the private sector and those engaged in *quasi* government institutions like local authorities, electricity distribution, National Railways of Zimbabwe, and Air Zimbabwe. Employees intending to go on strike must have a dispute of interest which dispute must have been referred to conciliation and a certificate of no settlement must be obtained from the conciliator. Once the certificate is issued, employees must choose either to refer the dispute to arbitration or engage in a strike action provided they are not in an essential service.

An essential service is described as 'any service the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public' and must have been declared so by the minister in the government gazette.

If the employees choose to go on strike, they must comply with the following requirements.

- Give 14 days' written notice to the employer and the employment council and the trade union in the industry if any.
- Conduct a secret ballot at every workplace of which 51% of the employees must vote in favour of the strike.
- At the conclusion of the 14-day

period, employees may engage in a strike action.

- Employees are allowed to conduct a picket at the workplace.
- Employees who comply with the procedures are protected from disciplinary action but will not be paid for the duration of the strike.

A failure to comply with the requirements renders the strike illegal and there are criminal as well as civil sanctions for failing to comply with the law. The employer can dismiss the strikers in terms of its code of conduct or upon proving the illegality in the Labour Court (s107) (*Tel One (Pvt) Ltd. v Communication and Allied Services Workers' Union of Zimbabwe* SC26/06)

However, section 104(4) of the Labour Act exempt employees from following procedures if the intention is to avoid an occupational hazard which is reasonably feared to pose an immediate threat to health or safety of the persons concerned or in defence of an immediate threat to the existence of a workers' committee or a registered trade union. In *National Railways of Zimbabwe (NRZ) vs Zimbabwe Amalgamated Railways Workers Union and others* LC/JDT/MT/99/12 the Labour Court ordered the employer to produce proof that it had provided safety equipment to the employees and remitted union dues to the trade unions for it to determine the illegality of the strike as alleged by the employer.

EXISTING LAWS

The Public Service Act refers to employees as 'members'. The Act covers those who render direct services to government except the security services, the judiciary, parliament and intelligence services and established commissions. It establishes the Public Service

Commission (now Civil Service Commission) as the employer on behalf of government and the commission acts in consultation with the minister responsible for Public Service Labour and Social Welfare. The Act provides for the recognition of employees' associations or organisations. It also provides for consultations with the recognised associations but does not recognise the right to strike nor prohibit strike action. However, employees who embark on strike action can be disciplined in terms of the service regulations which provide that engaging in a collective job action is a misconduct. Members in the Attorney General's office and parliamentary services have a constitutional right to strike.

The Health Services Act covers employees in the health sector only. It establishes the Health Service Board as the employer which acts in consultation with the minister responsible for Health and Child Care. The Act recognises the right of employees to form associations or organisation and can engage in consultations with the board if so recognised by the minister. The board in consultation with the minister has power to fix conditions of service for the health service employees. The right to strike is not recognised in terms of this Act or service regulations. The health sector is classified as an essential service.

The Act applies to members (employees) in the administration of justice. It establishes the Judicial Service Commission which is responsible among others for fixing conditions of service for its members. It recognises employees' right to freedom of association and consultation with regard to conditions of service. It does not recognise the right to strike nor prohibit strike action. Employees can use their constitutional right to strike.



Members of the defence forces, prison and police services do not have the right to form trade unions or staff associations. The conditions of service are imposed by the Defence Force Service Commission, Prison and Correctional Service Commission, Police Service Commission in consultation with the minister responsible for Defence, Justice and Home Affairs respectively. Section 65(2)(3) of the constitution of Zimbabwe prohibit these groups from enjoying the right to freedom of association and to strike.

PRACTICAL STRIKES

Despite the denial of the right to strike in the public service, employees in particular in the education and health sector have been embarking on strike to enforce their demands. In *Zimbabwe Teachers Association and others v Minister of Education and Culture, 1990*, the government was ordered to reinstate strikers who defied its order to return to work, after the government breached the *audi alteram partem* principle. The rule

means 'hear the other side' before making a decision. Therefore the other party must be given the opportunity to present its side of the story.

The teachers went on strike after government unilaterally withdrew their annual bonuses. Although the employees lost the case in court, the government reinstated the benefit. In a related matter, *Jiab and Others v Public Service Commission and another, 1999* the government was ordered to reinstate the striking doctors' leaders it had dismissed for embarking on an illegal strike. The Supreme Court ruled that the commission had breached the parity principle by only disciplining the strike leaders leaving out all those who participated in the strike action.

WAY FORWARD

Zimbabwe is now in the process of aligning its labour legislation to comply with the new constitution. All labour legislations have shortcomings on the right to collective bargaining and to strike. Public sector legislation only provides for consultations. A draft

of principles for harmonisation of labour laws is under discussion having been inspired by the International Labour Organisation (ILO) Commission of Inquiry that recommended the harmonisation of labour laws to comply with international labour standards.

Employees in the public service in Zimbabwe have the right to strike in terms of the constitution except those in the security services and essential services. The different labour legislations' provisions that violates the constitutional right to strike are now void and the legislature must speed up the legislative reforms to comply with the new constitution.

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