

Focus on the
Public Sector



The long wait

A new labour dispensation in the public sector: *problems and prospects*

Luci Nyembe* outlines the obstacles blocking labour legislation for the public sector. Delays, combined with unilateral restructuring of the public sector and government resistance to de-racialisation, are a major problem – not least for a future democratic government.

Civil servants in South Africa have very few rights. Unlike their counterparts in industry, they do not have the right to negotiate wages, there are no mechanisms to resolve disputes between employers and unions, and many civil servants are prohibited from striking.

While public service unions have been around since before 1921, they represented mainly white workers and did not fight to develop workers' rights. Their members were protected from low wages and job insecurity by a white government which needed their services to implement apartheid policies, and needed their vote to stay in power.

These unions did not need to go beyond "consultation", a feature of public service labour relations for the past 70 years. In recent years this approach has begun to disintegrate.

As part of its campaign against the 1988 amendments to the Labour Relations Act (LRA), COSATU demanded that all workers including farm, domestic and public sector employees be covered by the LRA. In the Laboria Minute, signed in September 1990 after years of protest action, the government

finally agreed to negotiate suitable labour relations arrangements for the state sector with the unions concerned.

Confused responses from the state

At the Laboria discussions, the government was represented by the Minister of Manpower. Since then, three different people have been Minister of Manpower. This chopping and changing has meant, essentially, that full-time bureaucrats, not fully committed to the Laboria Minute, have been directing developments. To compound matters, the Commission for Administration (CFA) acts as the representative of the state (as employer) at a national level.

During 1990, the CFA embarked on what its Annual Report termed "building a new Public Service". Its recommendations related exclusively to the establishment of greater managerial autonomy of the individual state departments and offices in order to "promote efficiency and professionalism". It made no recommendations concerning labour relations.

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Thus, while the CFA was responsible for recommending and establishing government policy on the public service, it was clearly out of touch with the need for a new dispensation in public sector labour relations.

Negotiations for legislation: the key issues

A group of eleven unions, mainly established staff associations, has been negotiating with the CFA. They are:

- Health Workers Union
- Hospital Personnel Association
- Institute of Public Servants
- Natal Provincial Administration Personnel Association
- Natal Provincial Staff Association
- National Education Health and Allied Workers Union
- Public Servants Association
- Public Servants League
- Public Servants Union
- Public Service and Allied Workers Union
- South African Nursing Association

Despite months of negotiations, no agreement on a new labour law has been reached. Differences in three basic areas are blocking progress.

a) ILO principles?

While the CFA initially agreed to base its draft labour Bill on the LRA and ILO conventions, the draft produced in August 1991 excluded a number of crucial issues. Most notable were:

- ☐ the definition of essential services as covering virtually the entire civil service. This is in contrast to the ILO definition of "services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population";
- ☐ the complete rejection of the right to compulsory arbitration in cases where strikes are prohibited (essential services).

b) Who applies the Act?

A further problem with the CFA's proposal is its insistence that it should administer the Act, rather than the Department of Manpower which administers the LRA. This has been the main leg of its argument for a separate Act. At least two unions, NEHAWU and HWU, favour

a single consolidated LRA for all workers under the Department of Manpower and the jurisdiction of a single Industrial Court.

The problem in giving the CFA the power to administer the Act, is that it allows the state as employer to exercise certain powers over itself. Thus, where unions in the private sector sometimes refer disputes to a Conciliation Board appointed by the Department of Manpower, the government proposes that a public sector union rely on the employer with which it is in dispute to appoint a Conciliation Board and determine its terms of reference.

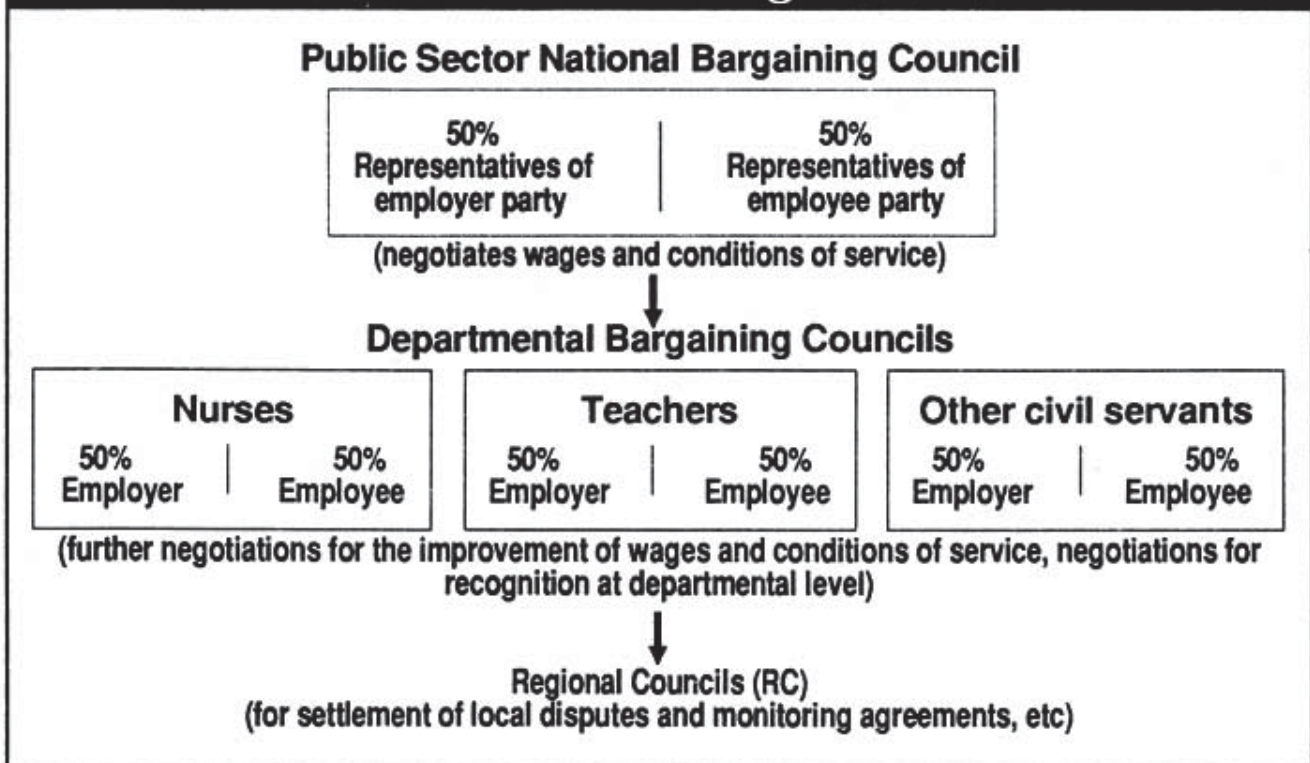
Given the CFA's track record in settling disputes, this scenario is not very encouraging. In the recent wage dispute, for example, the CFA stubbornly refused to accept mediation to resolve the dispute. Officials of the Department of Manpower, with more experience of labour disputes, may have shown a greater willingness and ability to solve the dispute in a positive way. The CFA's approach has resulted in major disruptions to both services and labour relations, in the public sector and, in particular, in hospitals. With the CFA administering a new Labour Relations Act, and acting as both player and referee, public sector labour relations can be expected to deteriorate at an alarming rate.

c) To whom should the Act apply?

The CFA wants to exclude teachers, as well as all members of the state security forces from labour legislation. It clearly believes that security personnel should have no labour rights. While there may be an intensive debate on whether intelligence and military personnel should have collective bargaining rights, it is very hard to argue against collective bargaining rights for policemen and prison warders, who have won significant rights internationally.

The CFA argues that teachers' rights should be the subject of negotiations with the Department of National Education. South Africa would then have (at least) three labour acts, and three labour administrations, with different levels of rights for each group of workers. COSATU argues that this will complicate matters unnecessarily. For the past

The collective bargaining structure in the public sector could look something like this:



20 months (December 1990 to date), no progress has been made in negotiating rights for teachers and their struggle for recognition continues.

A forum for collective bargaining

Despite these problems, a positive feature of the deliberations has been the acceptance of the need to establish a Public Service Bargaining Council at national level, and further collective bargaining arrangements for each state department and provincial administration. The proposed structure resembles the many Industrial Councils in the private sector, the main distinction being that, instead of a number of separate councils, there would be only one (see box).

The CFA has also accepted the unfair labour practice (ULP) definitions applicable to private sector employees, and the jurisdiction of a single Industrial Court for private and public sector workers. However, it argues that the Industrial Court should not have the power to make awards which involve additional expenditure of public funds.

What do civil servants earn?

High on the agenda of the public sector is deep dissatisfaction concerning low wages and racial discrimination. In July 1991, the lowest wage in the public sector was R537 per month. This was increased recently to R708 (July 1992). Wages are divided into ten salary intervals. 92% of civil servants earn R4 000 a month or less. The top echelon, director-generals and the like (a mere 0,2% of civil servants), earn more than R8 000 a month, excluding perks.

The lowest earners in all parts of the public sector are black workers. The following statistics, based on July 1991 figures, give an indication of the problem:

- ☐ Black wages are, in most cases R500 - R1 000 less than the average wage for workers in a particular category.
- ☐ In *central government* employment, average black wages were R1 448 per month as compared with white workers wages of R2 795 per month.
- ☐ In *local authorities*, average black wages were R1 013 per month compared to white

wages of R3 980 per month.

- In the *public sector as a whole*, average black wages were R1 349 per month as compared with white wages of R3 346 per month.

The statistics also reflect what everyone knows – that an insignificant number of black workers are appointed to higher grade posts. From the union point of view, any negotiations for “improvements in conditions of service” should include demands for affirmative action as well as training and upgrading of skills for black workers. Affirmative action needs to be incorporated into any rationalisation or restructuring of the civil service along non-racial lines. It could also contribute to improvement in the provision of public services to all sectors of the population.

Unilateral restructuring continues

Unfortunately, it is apparent that the South African government has no intention of introducing non-racialism into the civil service or of making significant improvements in the provision of services. On the contrary, it is continuing to restructure the public sector in ways that will limit the options for a democratic government.

It is making concerted efforts to commercialise and corporatise as much of the civil service as it can. This will have two effects:

- the public will have to pay more for a poorer service (witness the incompetence of Telkom, the SABC and the ever-increasing cost of services);
- it will be more difficult to fight for affirmative action policies at a number of individual companies, than to fight for an affirmative action policy in the civil service as a whole.

A new government wishing to improve public services will inherit a fragmented civil service and will have to deal with opposition to the re-nationalisation of government services.

The government's aim, to preserve white privilege and power, is clearly shown by its handling of the recent hospital dispute. The CFA was not prepared to negotiate wages with the unions/staff associations and came to the

negotiating table after a final decision had been made by the employer on wage increases for 1992. When a dispute arose, it was not prepared to resolve the dispute with NEHAWU and the Health Workers Union or to intervene when the Transvaal Provincial Administration (TPA) dismissed 7 000 workers. It is apparently under the illusion that, having dismissed the strikers, its problems will now go away.

In the present period of political change, a union which co-determines state policy on public sector employment is too great a challenge. The South African government intends to restructure the civil service according to its own agenda, prior to any political transition. Commercialised companies will be able to retain the present racial structure of employment and management, and a non-racial government will have little power to change this. Political parties negotiating the transition have not succeeded in getting close enough to government processes to have any real impact on the current unilateral restructuring. However, the unions could delay, or even disrupt, the state's agenda for the civil service. Thus the CFA's need to break the power of unions like NEHAWU and HWU.

Conclusion

Negotiations for labour legislation are definitely a priority for public sector unions. Legislation can establish a framework, a set of 'rules', for collective bargaining. The absence of this allowed the state to smash union initiatives to co-determine state policy in 1992. However, constitutional change, and government resistance to it, impacts directly on public sector labour relations. Unions, therefore, need to develop a strategy which addresses both issues – labour legislation and constitutional change.

The restructuring of the civil service and opposition to unilateral government restructuring should be moved much higher up the agenda of trade unions and political parties, as the civil service will be the major vehicle for addressing the social and political inequalities in a 'new South Africa'. ☆