

THE EDUCATION AS ESSENTIAL SERVICE DEBATE

PRESENTED TO THE SADC CONGRESS

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The debate

THE DEBATE

Should education be:

- An essential service with no right to strike, or
- A non-essential service with a right to strike

Essential services and the denial of a right to strike

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

- Right to strike is fundamental
- ‘If workers could not, in the last resort, collectively refuse to work, they could not bargain collectively. There can be no equilibrium in industrial relations without a freedom to strike.’ – P Davies and M Friendland

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

- The rationale behind collective bargaining is to maintain industrial peace
 - “it is one of the ironies of collective bargaining that its very object, industrial peace, should depend on the threat of conflict.” – Halton Cheadle
- “Collective bargaining without the right to strike amounts to collective begging”

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

- LRA recognises the right
- But with limitations
 - essential services
 - rights disputes
- Is Constitutional
- Provided limited to “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

- Sovereignty justification

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

“This justification was clearly articulated by Judge Walter Little as follows ‘... our democratic processes provide the methods by which the interests of the community are to be safe guarded. We choose by free elections those who would be entrusted with that responsibility and we have the opportunity at regular intervals of either affirming that trust or transferring it to others. Implicit in the selection of those who will govern us is the duty of those selected to provide, without interruption, those services to which all citizens are entitled by law to avail themselves. Therefore, despite my opposition to the imposition of compulsory arbitration to settle industrial disputes in the private sector, I cannot accept the proposition that anyone who joins the public service, should have the right, in conjunction with others, to withdraw his services with the sole objective of compelling a duly elected Government to meet their demands, no matter how meritorious they may be. To admit such proposition, is to imply that our processes of Government, and the services which are provided by law for the benefit of all citizens when required, can legally be rendered ineffectual if a critical segment of public servants or crown employees should engage in strike action. The result of such enforced repudiation of its obligations to the community by the Government could be, as stated by the late Honourable Mr Dodd Rand, “the Harbinger of Social Disintegration”

ESSENTIAL SERVICES AND THE DENIAL OF A RIGHT TO STRIKE

- Monopoly justification
- Public harm justification

IS EDUCATION AN ESSENTIAL SERVICE?

- Not in terms of the LRA
- Could it become one in terms of the LRA?
- ILO committee of experts
- Education crisis in SA

Essential service and the right to interest arbitration

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

- Essential service alternative to the right to strike is interest arbitration
- Arbitrator to determine the dispute as it would have been determined if a strike were permissible
- Need for leverage and equilibrium

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

KINDS OF INTEREST ARBITRATION

- At least five varieties of interest arbitration are identified by writers
 - *“conventional arbitration of all unsettled claims selection of the last offer of the employer or of the union on a n issue basis*
 - *selection of the last offer of the employer or of the union or the fact finder’s report on a single package*
 - *selection of the last offer of the employer or of the union or the fact finder’s report on an issue by issue basis.*
 - *separation of the dispute into economic and non-economic issues and employing one of the selection procedures outlined above.” – Christopher A Barreca et al*

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

CRITERIA IN INTEREST ARBITRATION

- Common law of arbitration has developed the following principles:
 - replication of a negotiated outcome;
 - demonstrated need for the change proposed;
 - total compensation – the overall cost to the employer of the deal; and
 - appropriate comparison with similarly situated employees doing similar work in similar sectors

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

CRITERIA IN INTEREST ARBITRATION

- Important subsidiary principle
 - workers not to subsidise public services

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

CRITERIA IN INTEREST ARBITRATION

- Typical arguments
 - ability to pay
 - prevailing practice in industry
 - cost of living indices
 - previous practice
 - competition

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

CRITERIA IN INTEREST ARBITRATION

- Typical arguments
 - productivity
 - public interest
 - supply and demand
 - internal and external comparisons and equity

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

CRITERIA IN INTEREST ARBITRATION

- No single criterion applies
- Combination

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

- LRA and Bargaining Council Constitutions require interest arbitration in essential services
- Award only becomes binding if parliament approves or the CCMA determines

ESSENTIAL SERVICE AND THE RIGHT TO INTEREST ARBITRATION

ARGUMENTS AGAINST INTEREST ARBITRATION

- Should be no intervention by Government or outside third party
- Conflict or threat of conflict essential to effective collective bargaining
- Chill or narcotic effect
- Corrosive effect on leadership
- Lack of arbitration criteria
- Time consuming

Outcomes of public sector strikes

Public Sector Strike 2010

Duration
of strike

Wages lost – No work
no pay [2% per week]

21
days

6%
ANNUAL SALARY LOST

Apparent gain/loss suffered
[difference between employer offer at start of strike and settlement]

(7.5 – 6.5) = 1% "GAINED"

Actual gain/loss [difference of wages lost and apparent gain]

(1 – 6) = 5% LOST

Municipal Strike 2011

Duration
of strike

Wages lost – No work
no pay [2% per week]

16
days

4.2%
ANNUAL SALARY LOST

0.0%

(0 – 4.2) = 4.2% LOST

Public Sector Strike 2010

Number of weeks for workers to recover actual loss using apparent gain

156 weeks

Reported violence

INTIMIDATION, RUBBER BULLETS, WATER CANNONS, DEATH, DISMISSAL

Reported cost to employer

ESTIMATED COST TO SOUTH AFRICAN ECONOMY R1 BILLION PER DAY

Municipal Strike 2011

Number of weeks for workers to recover actual loss using apparent gain

Never

SERVICE INTERRUPTION, DESTRUCTION OF PROPERTY, INTIMIDATION

Outcomes of private sector strikes

	National Road and Freight Strike	Metal Industry Strike	Chemical and Petroleum Industry Strike	Mining Industry Strike (Diamond)	Mining Industry Strike (Coal)	Mining Industry Strike (Gold)	Cleaning Sector Strike	Bus Strike
Duration of strikes	6	14	21	14	10	4	21	21
	Days	Days	Days	Days	Days	Days	Days	Days
% Wages lost [no work no pay]	-2.1	-4.0	-6.0	-4.0	-2.3	-2.0	-6.0	-6.0

	National Road and Freight Strike	Metal Industry Strike	Chemical and Petroleum Industry Strike	Mining Industry Strike (Diamond)	Mining Industry Strike (Coal)	Mining Industry Strike (Gold)	Cleaning Sector Strike	Bus Strike
Apparent gain % [difference between employer offer at start of strike and settlement]	+1.5	+1.0	+1.5	+0.5	+4.5	+0.5	+2.0	+3.0
Actual gain/loss % [difference of wages lost and apparent gain]	-0.6	-3.0	-4.5	-3.5	+2.2	-1.5	-4.0	-3.0

**Reported cost
of employer**

Fuel retailers

R2
billion

Taxi industry

R35
million

Output lost

\$25
million
per day

**National Road and
Freight Strike**

**Metal Industry
Strike**

**Chemical and Petroleum
Industry Strike**

**Mining Industry Strike
(Diamond)**

**Mining Industry Strike
(Coal)**

**Mining Industry Strike
(Gold)**

**Cleaning Sector
Strike**

**Bus
Strike**

Outcomes of interest arbitration

OUTCOMES OF INTEREST ARBITRATION

- Tracks strike outcomes
- Advantages:

“... rates of dependence on arbitration declined considerably, the effectiveness of mediation prior to and during arbitration remained high, the tri-partite arbitration structure continued to foster discussion of options for resolution among members of the arbitration panels, and wage increases awarded under arbitration matched those negotiated voluntarily by the parties. Econometric estimates of the effects of interest arbitration on wage changes in a national sample suggest wage increases between 1990 and 2000 in States with arbitration did not differ significantly from those in States with non-binding mediation and fact finding or States without a collective bargaining statute.” – The Long-Haul Effect of Interest Arbitration: A case of New York States Taylor Law

ADVANTAGES OF INTEREST ARBITRATION

- No loss of pay during strikes
- Outcomes become predictable
- Saves the parties loss
- Seen by some unions as a powerful substitute

Need for change

NEED FOR CHANGE

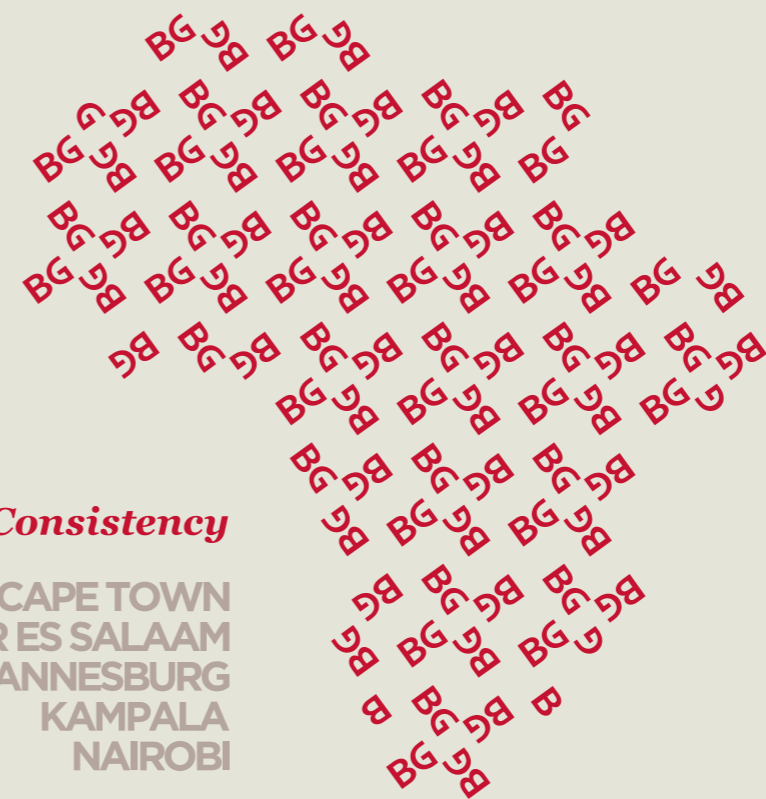
- Need for education about interest arbitration
- Need to amend LRA or need for agreements to arbitrate
- Need for highly skilled and independent arbitrators

Conclusion

CONCLUSION

- Issues are complex
- Need for proper analysis and consideration
- Need for rational problem solving rather than an adversarial contest

Thank you



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