

Fundamentals of Employment Relations

PERSPECTIVES ON EMPLOYMENT RELATIONS

Pluralism

- Sees the organization as an alliance of diverse people with diverse objectives, interests and values.

- Accepts trade unions as a part of the labour scene & work with management & employees to resolve/limit disputes.

- Disputes are dealt with through collective bargaining

- Acknowledges that conflict puts organization in a permanent state of dynamic tension.

Unitarism

- Views organization as an integrated group of people with connected values interests and purpose.

- loyal employee structure - unrealistic because employees can't be completely loyal

- discourages trade union participation

- encourages unity and harmony in the workplace.

Radical (Marxist)

- Assumes that workers are exploited for the sake of capitalism and therefore emphasis is placed on class struggle.

- Conflict is always rooted at a macro level and is sociopolitical & economic

Fundamentals of Employment Relations (cont)

- Trade unions are viewed as an unavoidable response to capitalism, which enhances the industrial power of the working class & form part of a political process to change the nature of the socioeconomic and political systems of society.

CORPORATISM & CONCERNATION

Societal Corporatism

- Is known as an extension of pluralism & referred to as tripartite coordination & cooperation.

- Industry role-players contribute their knowledge to government for development

- Interdependence between all three parties of the Tripartite relationship is acknowledged.

State Corporatism

- State imposes its will on labour movement

- Closer to unitarist approach than pluralist

- NEDLAC (National Economic Development & Labour Council)

- Conflict between business and labour is seen as undesirable & the legitimacy of trade unions are questioned.

Participants in the Tripartite Relationship

Employers

Participants in the Tripartite Relationship (cont)

- Representation of employers, also represented by employer organizations

- must see that things are done in the right way to realize objectives of the organization

Employees

- workers sell/hire out their labour potential to the employing party to perform specific tasks

- represented by employee organizations (trade unions) which may be members of umbrella trade union federations such as NACTU & COSATU

The State

Government plays role of both *master & servant* of the two primary participants (employers and employees)

MASTER - makes laws to ensure that Employment relations is practiced in a way that does not disrupt general order of society. Plays a role through enforcement, includes Department of Labour, the CCMA & the Labour Court

SERVANT - helps both primary parties conduct their relationship in an orderly manner.

While these are the most actively and directly involved in the employment relations system, the Tripartite Relationship has been criticized for being too narrow.

Additional Participants - Pentagonal Relationship

Competitors

Organizations must take note of what their competitors are doing so that they adapt and innovate to survive. Competitors constantly observe and compare each other

Whilst the Pentagonal approach opened up room to include role-players, it did not take into consideration that there are more participants that influence the employment relations system

The Multipartite Perspective

- seen as the best as it acknowledges the interdependent relationships that organisations have with employees, suppliers, regulators, customers and the communities they operate in.

- recognizes that the State is a major employer in South Africa and that unemployed people and those are part of the informal sector play a significant role in employment relations.

- gives a more realistic and holistic view of employment relations in South Africa whilst acknowledging every single stakeholder, regardless of how small their role or contributions may be.

The Multipartite Perspective (cont)

- also recognizes the complexities in the meanings of Employers, Employees, the State, Competitors and Customers far more than the Tripartite system ever could.

Employer Organizations

Definition

A formal, voluntary grouping of employers set up to advise, defend or represent the interest of affiliates, not only in their dealings with organized labour but also to lobby & influence the State or other relevant organizations

Objectives

All activities in relation to relationship with employee trade union, such as settlement of disputes & promotion of legislative measures.

Sectoral Employer's Organizations

- can operate nationally, depending on the type of industry

- may form part of Bargaining Councils through which *collective agreements* are published through Government Gazette & then become delegated legislation

- employer is bound by terms, conditions or collective agreements which have been entered into upon joining employer organizations

BUSA - Business Unity of South Africa

- Created 11 October 2003 & replaced Business South Africa (BSA) & Black Business Council (BBC)

- Represents business in all sectors of economic activity in South Africa

- Current membership: 49 business associations & employer organizations

Objectives

1. Achieving a deracialized, vibrant, diverse & globally competitive economy
2. Boosting enterprise development & facilitating the transition of informal businesses into the formal economy
3. Creating a predictable, certain & enabling regulatory environment
4. Ensuring affordable, reliable & sustainable energy & infrastructure to meet current and future needs
5. Contributing to a productive and stable labour structure
6. Supporting a progressive tax system that supports inclusive growth objectives
7. Committing to trade policies that supports South Africa's developmental goals & promote inclusive growth
8. Partnering with government to improve education & skills development for current & future work

BUSA - Business Unity of South Africa (cont)

9. Contributing to the creation of a comprehensive social security system at a pace that is affordable, sustainable & fiscally responsible

10. Cooperating with national business organizations & regional & international business groupings to advocate for regional & economic integration & improved local policies and conditions for businesses

Employee Parties

Definition of Employee (according to Section 213 of LRA)

a) any person, excluding an Independent Contractor, who works for another person or the State and who receives or is entitled to receive any remuneration

b) any person who in any manner assists in carrying out or conducting the business of an employer

DIFFERENTIATING BETWEEN EMPLOYEES & INDEPENDANT CONTRACTORS

Employees

- Object is the rendering of personal work-related services between employee party & employer party

- The employee must render the work-related service at the behest of the employer party

- The employer party may decide whether to have the particular employee render the work-related services

Employee Parties (cont)

- The employee is obliged to obey lawful, reasonable instructions regarding the work to be done and the manner in which it is so done

- Relationship terminates on completion of the agreed period and by death of employee

Independent Contractors

- Object is the provision of a specified work-related service or a certain specified work-related result or outcome

- The independent contractor is not obliged to perform the work related to the service or result/outcome personally, unless otherwise agreed

- The independent contractor is not obliged to obey any instructions in terms of how the work is to be done or the result that is to be attained

- Bound to perform specified work or deliver specified results within a specified or reasonable time

- Relationship not terminated by death of contractor but is terminated on completion of specified work/delivery/attainment of specified outcome/result

Trade Unions

Definition

Trade Unions (cont)

A trade union is regarded as a continuing permanent organisation created by workers to protect themselves at their work, to improve the conditions of their work through collective bargaining, to seek to better the conditions of their lives, and to provide a means of expression for the workers' view on matters of society.

- Trade Unions are founded on the sociocultural value of collectivism, often referred to as solidarity.

Trends that impact on the Trade Union Movement Internationally

- Increased pace & magnitude of globalisation

- Growth in forms & use of more insecure types of employment

- Growth of small businesses rather than larger organizations

- Technological change presenting challenges & opportunities

- Change in skills composition of the workforce, partly related to sectoral shifts in economies

- Changes in demographics of workforces

- Lack of employment in the formal, with growth in informal sector work & employment

Types of Trade Unions

Occupational Unions

Trade Unions (cont)

organize and recruit their members from employees in certain occupations - in accordance with their skills

Examples: craft unions, promotion unions, blue-collar workers unions, white-collar workers unions

Registered Examples: Electronic, Allied & Metal Workers Union of South Africa, Meat & Allied Workers Unions, Professional Educators Union, National Professional Teachers' Association of South Africa

Industrial Unions

Specific industries or groups of industries, and members typically work in that industry, irrespective of trade or profession

Examples: miners (NUM, AMCU); steelworkers (the National Union of Metal Workers of South Africa); autoworkers (South African Transport & Allied Workers' Union)

General Unions

Do not restrict membership in terms of skills or industry, rather they function on the principle of communality of workers' interests. Working class vs. owner's class

Examples: National General Worker's Union

Methods Trade Unions use

Industrial action, collective bargaining, service & benefit schemes and national & international cooperation, affiliation and representation

The Shop Steward

Trade Union representatives put in the workplace to represent workers and their interests. They are regulated by the LRA and trade unions stipulate their roles and responsibilities.

Stipulations for Shop Stewards

1. May at times be responsible to the executive committee for their actions & shall always conduct themselves in a manner worthy of a union representative.

2. Promote their best possible relationship & good cooperation between members in their sections & sectional heads

3. Confine themselves to the affairs of their section & should not discuss matters concerning policy or principles of the union with management or any of its representatives. They should familiarize themselves with the principles & policy of their union to properly inform their members

4. *Grievances, complaints & suggestions* for improving working conditions in their sections should be reported to the shop stewards by branch committee/ordinary members. Shop stewards examine these complaints to establish whether they're well-founded. These should be reported to sectional heads if there are grounds for dissatisfaction so that a solution can be found.

The Shop Steward (cont)

5. Shop stewards & sectional heads should give immediate notice for their intention to call in the assistance of the trade union should they not be able to arrive at a mutually beneficial solution. They must present all proposals for improved working conditions which they received from section members.

6. Shop stewards are highly sensitive to the branch committee & the local officer

7. Must attend all branch committee meetings of their branch so that they can reply directly to any questions which may be raised in connection with the handling of any matter entrusted with them.

8. Present *reports (written)* every month to their branch committee on all matters entrusted to & dealt with by them

Major Trade Union Federations

Congress of South African Trade Unions (COSATU) - 21 Affiliates

Core Principles

- international worker solidarity
- worker control
- paid-up membership
- "one industry, one union"

Involved in number of ventures aimed at promoting black business & supporting the federation financially

Federations of Unions of South Africa (FEDUSA) - 20 Affiliates

Core Principles

Major Trade Union Federations (cont)

- equal opportunity & treatment for all men and women
- Freedom of Association & the right to organize
- trade union democracy
- development for all

Believes their relationship with the *International Labour Organization (ILO)* is important

National Council of Trade Unions (NACTU) - 22 Affiliates

Core Principles

- non-racialism
- worker control at all levels & structures of the unions
- leadership by working class

Has become involved in investment ventures with the aim of empowering the masses economically by increasing African control over investment decisions

All 3 trade unions have representation on the National Economic Development & Labour Council (NEDLAC)

The Contract of Employment

Requirements for a Valid Employment Contract

- The parties must have contractual capacity
- Performance of the contract must be possible
- The contract may not be *contra bonos mores* (against public moral values)

The Contract of Employment (cont)

- The contract must comply with any formalities that may be prescribed
- The parties must reach consensus on the essential terms of the engagement

How to Prove an Employment Relationship

- the manner in which the presumed employee works is subject to the control/direction of the presumed employer
- the person's hours of work are subject to the control or direction of another person
- the person works for the organization & forms part of that organization
- the person has worked for the other person for an average of at least 40 hours per month over a period of 3 months
- the person is economically dependent upon the person for whom he/she works or renders a service

- the person is provided with tools & equipment by the other person
- the person works/renders a service to only one person

The Labour Relations Act 66 of 1995

Section 23 of the Constitution deals with labour relations

- 1) Everyone has the right to fair labour practice

The Labour Relations Act 66 of 1995 (cont)

- 2) Every **worker** has the right to form & join a trade union, to participate in the activities & programmes of a trade union and to strike
- 3) Every **employer** has the right to form & join employer organizations and to participate in the activities & programmes of an employers' organization
- 4) Every **trade union** & every employers' organization has the right to determine its own administration, programmes & activities, to organize and form & join federations
- 5) Every **trade union, employer's organization and employer** has the right to engage in collective bargaining, National Legislation may be enacted to regulate collective bargaining. To the extent that legislation may limit a right in this chapter, the limitation must comply with *Section 36(1)*
- 6) National Legislation may recognize union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with *Section 36(1)*

FREEDOM OF ASSOCIATION & GENERAL PROTECTION

Protection of Employees & Persons seeking Employment - Section 4 of LRA

The Labour Relations Act 66 of 1995 (cont)

No person may discriminate against an employee by any of the following actions:

- 1) Force an employee or a person seeking employment not to be or to become a member of a trade union/workplace forum or give up their membership of a trade union/workplace forum
- 2) Prevent an employee or a person seeking employment from exercising any right conferred by the Act or from participating in any proceedings in terms of its provisions
- 3) Prejudice an employee or a person seeking employee for
 - membership of a trade union/workplace forum
 - participating in forming a trade union or federation of trade unions/workplace forums
 - participating in the lawful activities of a trade union, federation of trade unions/workplace forums
 - refusal or failure to do something that an employer may not lawfully permit or require an employee to do
 - having *disclosed, disclosing or wanting to disclose* information that the employee lawfully entitled or required to give to another person
 - exercising any right conferred by the **LRA** & participating in any proceedings in terms of this act.

The Labour Relations Act 66 of 1995 (cont)

4) Give advantage or promise to give advantage to an employee or a person seeking employment for not participating in any proceedings in terms of and exercising any right conferred by the LRA. However, nothing precludes the parties to a dispute from concluding an agreement to settle that dispute

Protection of Employer's Rights - Section 7 of LRA

No person may do or threaten to do any of the following

1) Discriminate against an employer for exercising any right conferred by the LRA

2) Force an employer to be or to become a member of an employer organization or to give up membership of an employer's organization

3) Prejudice an employer for

- having been, being or wanting to be a member of an employers' organization

- having taken part, taking part or wanting to take part in forming an employer's organization or a federation of employers' organizations

- having engaged, engaging or wanting to engage in the lawful activities of an employers' organization or a federation of employers' organizations

The Labour Relations Act 66 of 1995 (cont)

- having disclosed, disclosing or wanting to disclose information that the employer is lawfully entitled or required to give to another person

- having exercised, exercising or wanting to exercise any right conferred by the Act

- having taken part, taking part or wanting to take part in any proceedings in terms of the LRA

- give advantage or promise to give advantage to an employer for not exercising any right

