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2000-04
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UNIVERSITY OF THE WITWATERSRAND

THE AFRICAN STUDIES SEMINAR SERIES

Monday the 10th of April 2000, 7th floor Richard Ward Building, room 7003 @ 16:00

The Neglected Role of Labour Relations in the South African Public Service

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INTRODUCTION[1]

As a consequence of South Africa's transition to democracy, public service workers now enjoy trade union and collective bargaining rights for the first time in the country's history. These changes provide public servants with opportunities to bring their conditions of service into line with industrial relations 'best practice' in the private sector, and for black workers in particular, to redress decades of racism, employment insecurity, and low pay.

Yet these reforms occur at a moment of straightened economic circumstances, which constrain possibilities for wage gains and employment growth. Moreover, the public service is undergoing massive restructuring, not only to overcome legacies of racial inequality and authoritarianism, but to transform the state into a more effective agent of development. The problems - under conditions of austerity - of addressing workers' wage demands and concerns for job security while redressing the legacies of apartheid will likely generate considerable conflict between workers and managers as well as between different groups of workers.

These difficulties exist in many areas of the South African economy. But labour-management conflict in the public service is not a narrow industrial relations issue of interest to the parties alone. The public service is, with more than 1,1 million employees, the largest single employer in the country. Through its procurement policies it is the largest single consumer of goods and services. The wages and benefits it provides have a massive impact on effective demand, particularly in provinces where public servants make up a large proportion of total employment. Through its direct expenditure on social services and development, and indirectly through the economic effects described above it is the most important single agent of reconstruction. Finally, for vast numbers of citizens the public service is the provider of last resort: its actions literally determine whether people live or die.

Thus labour relations conflicts in the public service will have crucial and long-lasting consequences for restructuring the state as an institution, and therefore for the government's ability to promote fiscal integrity, economic development, and service delivery. Such conflicts will thus inevitably spill beyond the boundaries of the public service to have an important impact on all citizens. But labour relations are not simply a 'problem' to be avoided at all costs, for example by limiting public servants' right to organise or strike, or by exempting the service from labour relations legislation. If labour-management conflicts point to the existence of a problem, they also hold out the promise of a solution. Negotiated agreements between government and organised labour may provide means for finding constructive solutions to the tangle of difficulties currently confronting the public service.

Public service labour relations is thus an important factor shaping the prospects for development in South Africa, and with it the fate of democratisation itself. But the possibility of developing modern labour relations practices in the public service, given its legacies of racially based paternalism and authoritarianism, and given fiscal constraints is a tall order. These practices do not emerge automatically as a consequence of the legislative inclusion of the public service in the Labour Relations Act and the extension of substantive and procedural rights to the sector. In the private sector these rights evolved over decades of

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[1] This is the introduction to a new collection, *Public Service Labour Relations in a Democratic South Africa* (Johannesburg: Witwatersrand University Press, in press), edited by the author. The book is the product of a collaborative research project sponsored by the National Labour and Economic Development Institute. Thanks are due to Barbara Adair and Jeremy Baskin for detailed comments on an earlier version.

intense conflict, and remain imperfect, unevenly applied, and subject to reversals. It is difficult to imagine that the growth of labour relations in the public service will be any less fraught. However, if public service labour relations go wrong, the consequences could be profound for all South Africans. Thus the public service will be perhaps the single most important labour relations arena in the future.

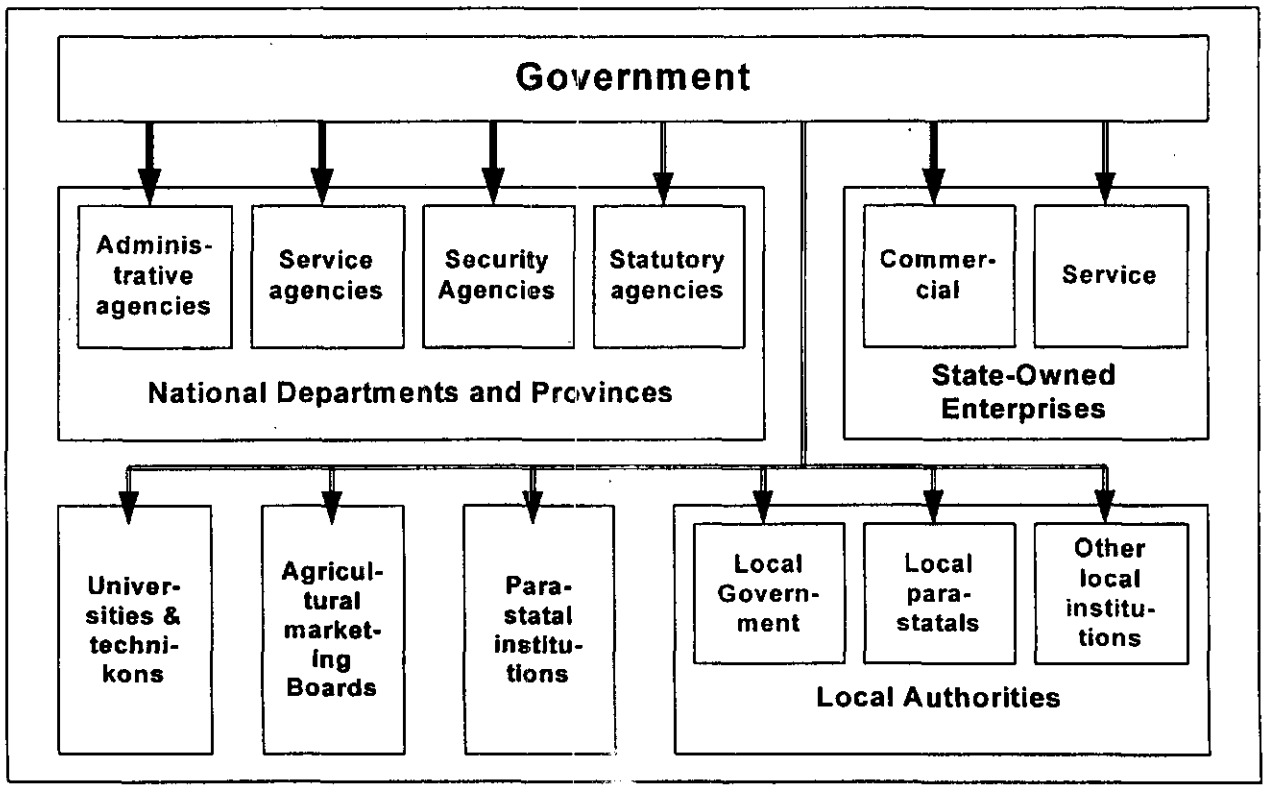
Yet the subject is almost entirely unresearched in this country. Much of the existing published material is descriptive and technical, oriented towards training officials in the rules and procedures of the public service itself. While such texts have their role, they are insufficient for preparing unionists, public servants, students and academics to confront the key issues in a public service undergoing transformation. The chapters in this collection are a first attempt to come to grips with this difficult but fascinating area of investigation.

WHAT IS THE PUBLIC SERVICE?

The public service is part of the broader *public sector*, and though the terms are often used interchangeably, they may refer to very different things. As this book focuses on the *public service*, it is important at the outset to define the term.

The public sector refers to all institutions public control where direct or indirect political control is exercised through appropriate legislation. In this light, the public sector includes a wide range of components: national and provincial departments, state-owned enterprises, and local authorities. These differ in terms of political control, relationship to the national budget, the method of wage determination, employment numbers and conditions, and the form of regulation and ownership. (See Figure 1.1)

Figure 1.1: The South African Public Sector

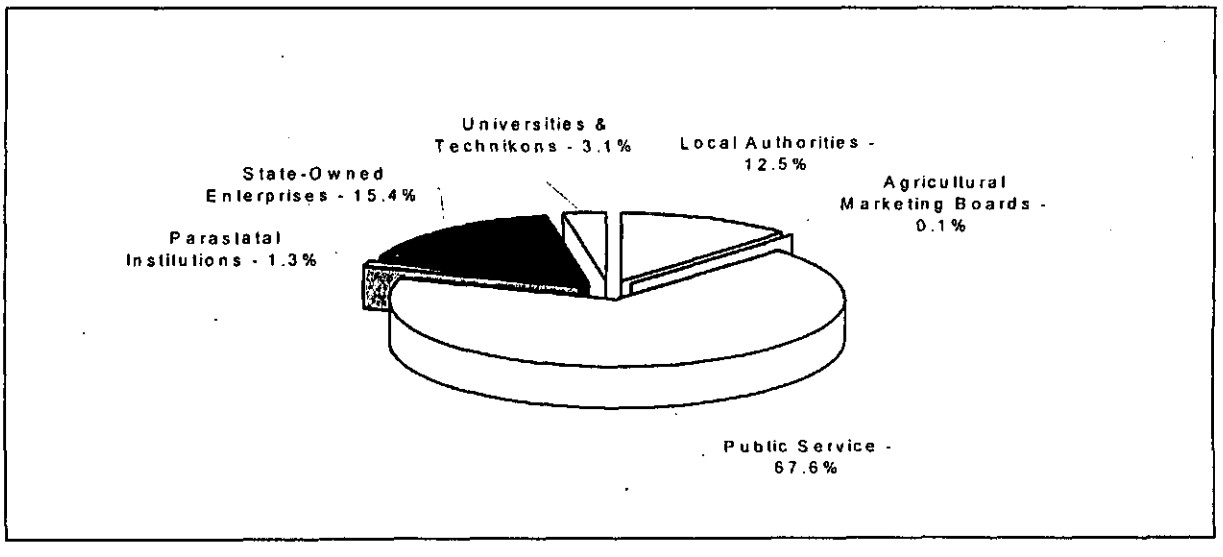


Public sectors vary greatly in scope and organisation between countries, depending on their own historical experience, politics, and needs. Moreover, in the last two decades the very nature of the public sector has undergone change under the influence of new market-based ideologies of governance and in the face of political shifts that have favoured right-of-centre political coalitions. As Waghorne points out in his chapter in this collection, there are no fixed definitions of either the public sector or - more narrowly - the public service that apply everywhere and for all time.

In South Africa the public sector as a whole employed nearly 2 million workers in 1996. (CSS, 1997) It included:

- the public service, defined as national and provincial departments, which was the single largest component of the public sector, accounting for more than two-thirds of all employment;
- state-owned enterprises, such as Transnet and Telkom, which accounted for another 15% of employment;
- local authorities, including city councils, municipalities, town councils, and the former regional services councils, which together employed approximately 13% of all public sector workers;
- and other components, including universities and technikons, marketing boards, and associated institutions which accounted for less than 5% of total public sector employment. (See Figure 1.2)

Figure 1.2: Public sector employment, December 1996



This book examines only the first and largest of these four components: national and provincial state departments. The emphasis means that some important dynamics in other areas of the public sector are ignored, such as privatisation of state-owned enterprises, local government restructuring, or the transformation of tertiary education. On the other hand, the narrower definition brings a number of advantages. By treating the public service as a single 'industry' (albeit one divided into different sub-sectors) covered by common legislation, the

discussion is focused on relations between a single 'employer' and a limited range of unions. Both the employer and the unions bargain in the same institution: the Public Service Bargaining Council was established in 1993 and reorganised in 1997 as the Public Service Co-ordinating Bargaining Council (PSCBC). The approach not only simplifies discussion of a complex subject, but allows for clear comparisons and for somewhat stronger generalisations to be drawn.[2]

Prior to 1994 the South African public service was complicated by the division of the country into 15 distinct administrations serving 11 different 'governments' which included the 10 apartheid-era 'independent states' and 'self-governing territories.'[3] The 1993 Interim Constitution of the Republic of South Africa, which came into effect following the first democratic elections in April 1994, eliminated these apartheid-era creations. It established a single public service for the country as a whole composed of a central administration and the administrations of the nine newly created provincial governments.

As can be seen from Figure 1.2, the public service is the single largest component of the public sector. It includes national departments, provinces, and statutory agencies. It also covers educators employed in terms of the National Policy for General Education Affairs Act, 1984; personnel employed under the Correctional Services Act, 1959; and police personnel employed under the South African Police Service Act, 1995. The public service also includes the South African National Defence Force, the National Intelligence Agency, and the South African Secret Service.

In 1996 total employment in the public service was nearly 1,3 million, though this had fallen to slightly more than 1,1 million by the end of 1998. (For a detailed breakdown of public service employment see Baskin, Chapter 7) The vast majority of these workers were employed in the service delivery and security agencies.

Since April 1994, greater clarity has emerged on the division of powers and functions between national government and provincial government and this has affected the location of public service workers. As both the interim and final constitutions defined many service delivery functions - such as education and health - as provincial competencies, the majority of public service workers are in fact employed in the nine provinces.

LABOUR RELATIONS IN THE SOUTH AFRICAN PUBLIC SERVICE

In focusing on labour relations this collection examines the range of interactions between the employer and organised workers in the public service. In the main these interactions focus on

[2] Our choice should not suggest any privileging of the role of the public service within the broad public sector; it is rather a practical choice defined by a series of research imperatives. Given the general shortage of reliable analysis of the public sector as a whole, we felt it wise to cover somewhat less ground, but to do so in greater depth. We hope that the completion of systematic studies of state-owned enterprises and local government will someday allow for a comprehensive assessment of the public sector in its entirety.

[3] These included the central administration of the Republic of South Africa and the four provincial administrations of the Transvaal, Orange Free State, Natal, and the Cape Province; the administrations of the 'self-governing territories' of QwaQwa, KwaZulu, Gazankulu, Lebowa, Kwandebele, and KaNgwane; and the administrations of the 'independent states' of Transkei, Bophuthatwana, Venda, and Ciskei, commonly known as the TBVC states.

remuneration (wage and non-wage) and conditions of service (including job grading and training, discipline, dispute resolution, affirmative action). However in both practice and law this relationship extends to a number of issues well beyond the employment relationship, including involvement in policy making in areas such as public service transformation.

For most of the twentieth century the public service was one of the most inhospitable sectors for worker organisation. The public service as a whole was excluded from the ambit of the Labour Relations Act (LRA), a condition that undermined collective action by all public servants, white or black. The very notion of 'labour relations' scarcely applied: no public servants, white or black, enjoyed the right to join a registered trade union and bargain collectively with the employer. They did not enjoy the right to strike, nor were they covered by mutually accepted procedures for discipline, retrenchment or grievances. Instead white public servants benefited from the range of discriminatory practices that served all white workers: citizenship rights, job-reservation, and social welfare. Moreover they were enmeshed in a deeply paternalistic system founded on patronage within Afrikaner nationalism. By contrast, black public servants faced the barrage of restrictions confronted by all black workers: the denial of basic citizenship rights, exclusion from the industrial relations legislation, repression by the security forces, employer hostility. In addition until the 1970s they were largely excluded from the racialised patronage networks within the state, except in the black homelands. While the wave of unionisation that washed over South Africa in the 1970s and 1980s swept away much of the employer unilateralism that characterised the workplace in the private sector, the public service remained an island where the employer's power reigned supreme.

Since 1912 the Public Service Commission administered all aspects of the employer-employee relationship, including the determination of wages and conditions of service, discipline, and grievance handling. (See Macun and Psoulis, Chapter 4, in this collection) It unilaterally determined the nature of work through the determination of a Public Administration Standard (PAS) for each occupation, and developed a welter of regulations and legislation governing employment. No issue was too large or too small to be determined by the centralised PSC.

White permanent civil servants (almost exclusively male) gained a measure of collective representation with the establishment of the Public Servants Association (PSA). But in line with the apolitical and professional public service ethos instilled by the British colonial model of administration, this was a restrained body that played a limited consultative role in the Public Service Joint Advisory Council. On the rare occasions when the PSA pursued an issue of importance to its members it could be ignored by the PSC.

Yet the PSA's constituents did not lack reasons for complaint. As Posel argues in her chapter in this collection, white public servants were continually frustrated by the PSC's below-inflation rate wage increases, sanctioning of unfair dismissals, and deaf ear to employee's grievances. Curiously the PSC's arrogance never provoked the PSA to take collective action, and for Posel, the explanation is bound up with the system of patronage created by the NP..

Labour relations under apartheid

The NP politicised the PSC in efforts to remake the public service into an instrument for realising its apartheid policy, neatly reversing the long-standing demands for public service neutrality it expressed while in opposition before 1948. Instead the NP treated the public

service as a vast pool of patronage for party loyalists, even if this meant appointing incompetent whites unable to find employment elsewhere in the expanding post-war economy.

In restructuring the state to pursue apartheid policies the public service was itself remade in apartheid's image. Not only did this entail the notorious creation of separate administrations for the TBVC states and self-governing territories, but it also led to a flurry of regulations to entrench the position of whites within the public service. These provisions contributed to duplication of work, the proliferation of occupational classes, a bewildering array of bonuses and allowances, and a massive wage gap marked by high levels of inequality on the basis of race and gender.

The legacies of this political approach continue to structure employment relations in the public service as these very regulations were preserved during the transition. The legislative drafters of the LRA – largely ignorant of conditions in the public service – relied on the advice of senior bureaucrats who secured the conversion of all existing public service regulations into collective agreements. As a result, the same officials who had written these regulations to promote their own interests – such as favourable voluntary severance packages, extensive non-wage benefits, and generous leave provisions - ensured that these would be virtually enshrined in the new order.

If NP hegemony created infinite ways to deliver benefits to Afrikaners, it also bound public servants in a subordinate position to the party and state elite. Most civil servants could not easily find work in the private sector, and were equally vulnerable should the impediments to recruitment of black public servants posed by job reservation be relaxed. As Posel argues, they knew 'that they depended on the party for their jobs, which could be revoked just as easily as they were supplied. The pressure for conformism and compliance were thus enormous.' These tendencies are clearly revealed Garson's and Marks' chapters in this collection, which describe the authoritarian culture common in schools and the police. In both cases promotion - if not survival - depended on fulfilling the commands of one's superiors.

Public service labour relations, according to Posel, were characterised by an increasing gap between the formal rationality of the bureaucratic PSC and the NP's party political project. Nor was the NP keen to resolve this tension. As PW Botha's 'total strategy' gathered momentum from the late 1970s the NP could use patronage to maintain loyalty while simultaneously deploying a public service discourse to discipline avowedly right-wing civil servants bent on undermining reforms.

In this context the NP had little interest in pursuing the Wiehahn Commission's recommendation to extend labour rights to public servants. In the face of the historic upsurge in union organisation in the private sector during the 1980s the PSC ignored the Commission's advice and chose instead to extend the PSA's 'diffident and polite' 'non-adversarial' (in Posel's words) model to other public servants on a racial basis. Thus the 1980s witnessed the launch of a number of relatively toothless staff associations defined by race, occupation and geographic location.

The apartheid public service under pressure

The decline of paternalistic unitarism in the public service occurred in tandem with the transition to democracy. In the second half of the 1980s the new union movement began at

last to make inroads into the public service. Union advances led by affiliates of the Congress of South African Trade Unions came first in those state departments most implicated in the state-society conflicts beginning in 1984. As state institutions became targets of township protest, increasing popular pressure came to bear on the black public servants responsible for services in black areas: teachers, police and soldiers, health workers. These workers had their own complaints accumulated as a consequence of years of discriminatory policies produced by the PSC. Now many were being asked by mass movement organisations to take sides in the growing civil conflict, for example by observing stay-away calls or embarking directly on industrial action, as in the 'chalk down' protests by teachers or the rolling mutinies by soldiers in 1989. (See Garson, Chapter 9 and Marks, Chapter 10)

In these actions, black public servants' material grievances - apartheid on the job - merged with their own and their communities' wider discontent with NP rule. As elsewhere in the economy this yielded an explosive combination that produced militant social movement unionism. The budding unions in the public service were from the outset highly politicised, in the first instance because they were the only formations in the labour movement that faced the apartheid state both as oppressor and as employer. Where in the past this combination put black public servants in a highly vulnerable position and retarded union development, under conditions of mass mobilisation and widespread conflict with the state it transformed the public service into perhaps the most volatile labour sector in the country. With the growth of the mass democratic movement during the emergency and in the defiance campaign after 1988 it became difficult for the state to pursue any strategy of unilateral reform from above: labour protest had transformed the state itself into an unreliable instrument of NP rule.

Such volatility was heightened - not diminished - by the unbanning of political organisations in 1990 and the onset of negotiations over South Africa's constitutional future. Ordinary labour repression was made virtually impossible once the NP had committed itself to a negotiated transition and free political activity was restored. The signing of the Laboria Minute in 1990 between the government, COSATU, the National Council of Trade Unions and the South African Consultative Committee on Labour Affairs (a representative business body on labour relations issues) committed all parties to fundamental revision of labour law which included the long-delayed recognition of public servants' labour rights within a single Labour Relations Act.

COSATU's efforts to establish a union beachhead in the public service date from 1987, with the founding of the National Education Health and Allied Workers' Union (NEHAWU). However these organising efforts bore little fruit until 1990. In education the federation played a central role in drawing together the disparate staff associations and more radical teachers' organisations that formed in opposition to the official bodies. The South African Democratic Teachers' Union (SADTU) was launched in 1990, uniting teachers across the disparate provincial and racial education authorities. In 1989 and 1990 police and correctional services officers staged a number of dramatic strikes, workplace occupations, and protest marches, and launched the Police and Prisons Civil Rights Union (POPCRU), which though it began as an independent union joined COSATU in 1994. (See Garson, Chapter 9 and Marks, Chapter 10)

These three unions were largely responsible for the biggest strike wave in the history of the public service between 1989 and 1993. As Macun and Psoulis write in their chapter in this collection, many of those who participated were not union members at the time, but joined after taking part in the strikes. The issues motivating the strikers were in nearly all cases the

same: wages, union recognition, solidarity with dismissed or harassed workers, and discriminatory treatment. There were few strikes in the civil service, still the preserve of the PSA and the other old-guard staff associations, and weakly organised by the COSATU affiliates. But civil servants did take action in the homelands, whose own repressive labour laws became a major target.

These strikes finally yielded a new labour relations dispensation, which saw core labour rights extended for the first time to public servants as a whole, with separate dispensations for educators and police personnel.[4] The legislation allowed for recognition of public service unions and collective bargaining, created dispute resolution procedures, and established a bargaining council for the public service with separate councils for teachers and police. (See Patel, chapter 6 and the chapters by Garson and Marks)

The new public service unions demonstrated considerable militance stemming from their double protest against apartheid and against the apartheid state as employer. During the transition his led to a second dual role: using their industrial muscle to block unilateral state restructuring (which would be deleterious to their members and would hamstring a future African National Congress government) and to push for transformation of the public service. In the context of the transition these interlinked imperatives made the new public service unions into the affiliates closest to the ANC.

Under these circumstances the new public service unions grew extremely rapidly after 1990. However after 1994 these conditions would also produce a strange inversion. Under successive ANC-led governments the politicised unions would find themselves under pressure to conform to the policy orientations of their political ally. At the same time, the old staff associations would transform themselves from the 'diffident and polite' organisations of the apartheid era into more effective representatives of their members' interests.

LABOUR RELATIONS IN A NEW DEMOCRACY

Power changed hands in April 1994 to the ANC-dominated Government of National Unity. However, daunting obstacles stood in the way of developing a public service, in the words of the Reconstruction and Development Programme (RDP), 'capable of and committed to the implementation of the policies of the government and the delivery of basic goods and services to the people of the country.'[5] (ANC, 1994:126)

These obstacles posed problems for the government and the unions alike, notwithstanding that in the few years since public service workers won labour rights they registered their greatest gains ever. However these advances occurred in an increasingly contradictory context, in which the fruits of democratisation for workers (improvements in wages and conditions of service, job security, bargaining power, involvement in decision-making) would increasingly run up against competing imperatives of boosting expenditure on services, transforming the state itself, and maintaining fiscal discipline. These tensions were

[4] Public Service Labour Relations Act, 1993; the Education Labour Relations Act, 1993; and the South African Police Service Labour Relations Regulations, 1993.

[5] The Government of National Unity came into existence following the elections and was comprised of the ANC, the NP and Inkatha Freedom Party (IFP).

temporarily contained with the adoption of a landmark three-year collective agreement in early 1996, but intensified with government's adoption of the Growth, Employment and Redistribution program (GEAR) in 1996. With the expiry of the agreement in 1999 the contradictions erupted into the first major conflict in the public service since the early 1990s.

Transformation

Given that its reason for existence was the promotion of apartheid, in both its culture and in its very institutions the public service was ill-suited to serving the development needs of the majority of the population. The NP's political projects shaped who was hired and promoted, where they were deployed and the character of their jobs. Most notably, the public service inherited by the ANC was strongly structured by a racial and gender division of labour resulting from decades of preferential hiring of white male Afrikaners. The priority given to party-political appointments meant that many public servants at all levels were hired for their loyalty rather than their ability to perform their jobs.

Moreover, the apartheid project shaped the very institutional integument of the public service. It was characterised by an uneven racial/geographic distribution of its services, the racial duplication of entire - incompatible and financially wasteful - administrative systems, and the preponderant power of the coercive institutions of the national security state.

Finally, the PSC's centralised rule-making power not only meant that modern labour relations practices were non-existent, but also made the public service highly inflexible. Ordinary workers were of course subject to its authority in the determination of wages and conditions of employment, but so, too, were senior public servants. Under PSC-rule senior officials were not managers in the conventional sense of the term: decision-makers with responsibility for the outcomes of their choices. Instead they were reduced to the status of administrators carrying out functions defined by the PSC within fixed regulations over which they had little influence. At both the top and the bottom of the public service hierarchy initiative, innovation, responsibility (and, therefore, accountability) were largely absent.

Given these legacies, transformation was as much about destruction as creation: not simply grafting new institutions and practices onto the old, but an ambitious program to change the public service's purpose, structure, and personnel composition. As a result, it was quintessentially a labour relations matter as the remaking of the public service simultaneously meant the reconstruction of workers' jobs, their relations with other employees, with their superiors and with the public they were expected to serve. From this point of view transformation entailed overcoming racial and gender imbalances, a commitment to education and training to develop public servants' skills, eliminating discrimination in salaries and benefits, and changing the public service's authoritarian culture and outmoded work practices.

Under the terms of the new LRA and in the common understanding of both government and labour, these changes were to be brought about through new *processes* of labour relations. On the one side these involved allowing workers' to organise and bargain freely with managers; on the other it required a change in the nature of authority, breaking the centralised power of the PSC and transforming administrators *into* managers endowed with decision-making power and responsibility. In short it entailed replacing the paternalistic model that had grown under apartheid with a system of labour-management bargaining that had developed in the private sector since the 1970s.

Given the enormity of transformation it is remarkable, looking back on the mid-1990s, that little explicit attention has been paid to its deeply contradictory character.[6] It was occurring in a politically sensitive milieu defined by 'sunset clauses' negotiated in the transition talks which made it difficult to replace the senior old-regime personnel who were transformation's very targets.[7] It was expensive: the enormity of redirecting public services to those who were once systematically denied such benefits entailed infrastructural and personnel expenditure of monumental proportions. Even assuming the goodwill of all parties and sufficient finances, these were - and remain - enormously complicated technical tasks: misguided policy and outright mistakes would be expected, and would inevitably cause delays. Transformation was rendered all the more difficult as service provision was to be maintained even as the instrument of delivery was undergoing change.

Finally, transformation generates its own conflicts, not only between employer and employees, or between old and new or white and black public servants, but within and between these categories as well. Transformation creates new winners and losers, and spawns new collectivities and alliances as well as new adversarial relations. These will not always coincide with the cleavages inherited from the apartheid public service, and will likely cut across established patron-client relationships. Indeed, in some cases they may create new ones. Given these difficulties associated with transformation, it is remarkable that it has not provoked either widespread breakdown or all-out civil war within the public service.

A strong case could be made that peace was maintained as a result of labour relations, which yielded improvements in wages and conditions of service, job security, and a relatively strike-free environment for most of the life of the Government of National Unity. However the means used to avoid war will not be readily available to the parties in the future.

Democratisation: Worker rights and collective bargaining

The Public Service Labour Relations Act (PSLRA) came into operation in August 1993 followed by enabling legislation in the education and police services sectors. These separate pieces of legislation were promulgated despite the agreement in the Laboria Minute to include the public service within the general labour relations dispensation. In part the legislation emerged from an immediate industrial crisis in the public service, which could not be systematically addressed outside of an appropriate legislative framework Yet the LRA itself was scheduled for fundamental renegotiation immediately following the installation of a new government. The PSLRA was thus an interim measure to create, virtually from scratch, appropriate bargaining structures and powers, as well as agreements about which issues would be bargained where, and appropriate representation from the employer and workers.

The Public Service Bargaining Council (PSBC) was established under the PSLRA and covered workers employed under the Public Service Act, excluding educators. According to

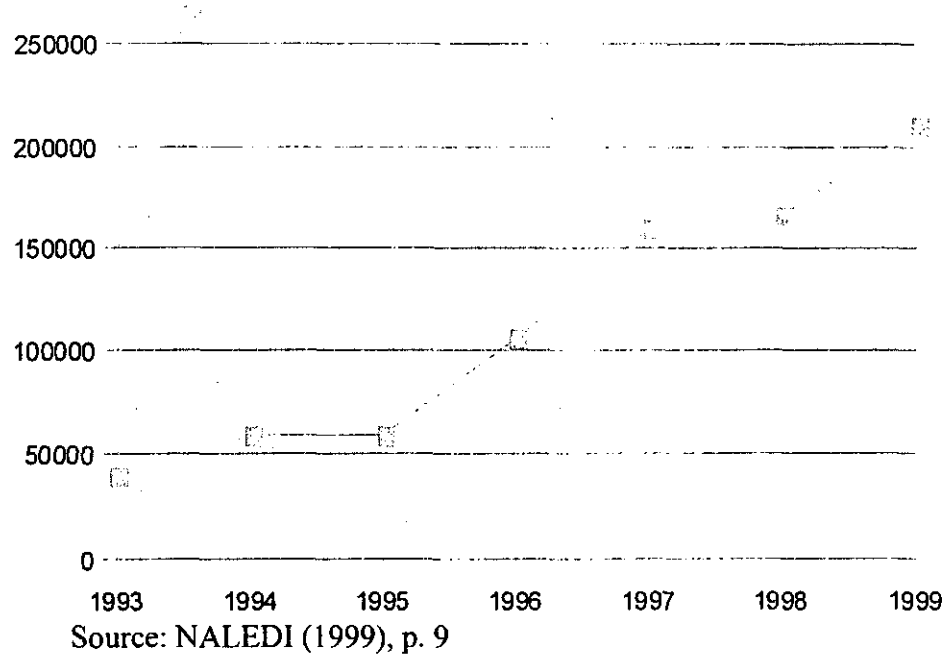
[6] Though the Presidential Review Commission on the public service acknowledges the existence of 'trade-offs' between transformation priorities, it does not begin to suggest what these should be, nor how they should be determined. (PRC, 1998: 2.1.4) Yet this acknowledgement is an important step forward over the earlier White Paper on transformation (DPSA, 1995), which did not even identify the problem.

[7] The ANC's concession on 'sunset clauses' granted a measure of job security to public servants from the old order.

Patel, both employer and employee representatives were weak and divided. The PSC - which had previously administered the public service unilaterally - was unable to adjust to the exigencies of bargaining, while its negotiators lacked basic labour relations skills. Employee representatives were similarly inexperienced and divided into two blocks, one composed of old-guard staff associations, the other of progressive unions led by NEHAWU. These problems entrenched adversarialism in the PSBC. Agreement on a settlement for 1993/94 was interrupted by the F.W. de Klerk government's unilateral implementation of an across-the-board (and below inflation) 5% increase. Nonetheless, a number of agreements were struck, including a wage settlement for 1994/1995.

Union membership increased rapidly, and in June 1999 stood at 981 816 out of 1 016 440 employees, giving an extraordinary union density figure of more than 96%.[8] (PSCBC, 1999) SADTU provides a good example of the rapid growth: its membership increased from 40 000 in 1993 to more than 210 000 in 1999, an increase of better than 420%. (See Figure 1.3 below; for complete union membership figures see Macun and Psoulis, Chapter 4)

Figure 1.3: SADTU membership, 1993-1999



Source: NALEDI (1999), p. 9

Though union density and growth rates are impressive, these do not provide an accurate index of union strength. Given the much more permissive labour law environment after 1994 and the relatively union-friendly orientation of government it would have been surprising if unions *did not* flourish. Their achievement is not, in this respect, exactly comparable to the organising gains registered by many private sector unions in the labour-repressive context of the 1980s.

[8] The PSCBC excludes from its coverage members of the South African National Defence Force, the National Intelligence Agency and the Secret Service. However, a recent Constitutional Court decision granted members of the SANDF the right to join a trade union, though the court was silent on the extent of rights soldiers would enjoy. (Constitutional Court, 1999)

Nor does density indicate the unions' degree of organisation. By contrast, in the 1970s and 1980s many private sector unions grew comparatively slowly, but on a factory-by-factory basis where they laid down strong shop floor organisation. Their emphasis on democratically elected shop-steward structures not only gave these unions a deep pool of leadership, but provided unions with the capacity to respond to members' needs and the ability to embark on disciplined action in pursuit of their interests. (Friedman, 1987; Adler and Webster, 1995) For the most part unions in the public service have not grown in this fashion, and workplace and intermediate-level organisation is generally weak. This is certainly the case among the old staff associations, which never professed to operate as representative trade unions, but also remains true of COSATU affiliates, despite their federation's long-standing commitment to shop steward organisation and leadership.

As Marks reveals in Chapter 10 on labour relations in the police service, neither the South African Police Union (SAPU) nor POPCRU have effectively translated into practice their in-principle commitment to developing shop steward structures. Effective organisation at shop floor and intermediate levels remains elusive and is not encouraged by the still highly centralised character of both public service bargaining and administration. The unions' capacity problems at these levels may compromise their ability to bargain in newly created provincial bargaining councils, and their ability to interact with management at all levels.

Finally, membership does not imply organisational loyalty. There is a marked tendency towards multiple union membership - where workers join one union to obtain benefits and another for political reasons - informally estimated at 80,000 or close to 10% of the total membership in the public service. This phenomenon has been relatively unknown in the private sector, where for black workers in particular union membership historically entailed a risky act of identifying with the unions' goals. 'Agency shop' provisions further dilute the meaning of union membership. Unions now receive 'agency' fees from public servants who are not members, but who nonetheless benefit from many of the collective agreements negotiated in the PSCBC. High agency shop fees induce workers to join a trade union, whether or not they identify with its goals.

Taken together, these factors suggest that high union density in the public service does not mean that the organisations possess effective power in their interactions with the employer. Their priority will need to shift to converting their massive numbers into organisational strength, especially as there is no room for further growth except through mergers or by poaching from other organisations. Those who fail to convert quantity of membership into quality of organisation may well find themselves on the defensive against management and the victims of their more successful rivals' poaching efforts.

The three-year agreement

In the 1994 bargaining round in the PSBC unions collectively put forward a set of demands that combined the old-guard staff associations' interest in a high overall increase and the progressive unions' interest for uplifting those at the bottom. The position called for a R1 500 minimum monthly salary and an across-the-board 15% increase. The unions expected that these demands would be met, given their membership growth, a new labour relations dispensation and the perception that the new government would be amenable to improving public servants' conditions of service.

Government rejected the proposal, and offered slightly more than a R1 000 per month minimum wage, with a freeze on salaries at the high end. The offer was rejected by all the unions, many of whom threatened to walk out of the talks. Government then offered a variable increase, starting at 20% for employees in the lowest grade, falling to 5% at the top, but the PSBC nonetheless deadlocked. The impasse was broken through high-level political intervention by then-deputy presidents Thabo Mbeki and F.W. de Klerk, and a wage agreement was reached only after commitments were made to create task teams to conduct a comprehensive investigation of the public service salary structure. The investigation was not completed in time for the 1995 round of negotiations, but the process was accelerated by a wave of wage strikes in the private sector and a particularly fierce wildcat strike among unorganised public service nurses.

The disparate positions of unions and government were eventually consolidated in a three-year agreement which not only went beyond the unions' original 1994 demand, but awarded the largest wage increase in the history of the public service, if not of the country as a whole. According to Baskin, (Chapter 7) the three-year agreement made a significant improvement in the minimum wage rate, which increased from R13 200 to R17 100 per year. The largest increase went to the lowest paid: Grade 1 workers received a healthy 29,5% increase, Grades 2-6 all obtained increases higher than 35%. (Jacklin and Machin, 1998: 14) No employee received an increase of less than 7,5%.

These increases - as large as they appeared - were made even more substantial by changes to the 'rank and leg' system of promotion. Where these promotions normally occur on an individual basis every two or three years, in 1996 all employees on Grade 1 were automatically advanced to Grade 2, whether or not they qualified on the basis of a performance review.

Plans for further increases in 1997 and 1998 were not realised, given problems in financing the agreement (see below). Still, in both of those years public servants received average increases at or above the rate of inflation, though improvements for those in the bottom grades were considerably higher, while senior managers' salaries were frozen.

As a consequence the agreement made major inroads into the public service wage gap. This legacy of the apartheid public service was reduced from 64:1 in 1989 to 25:1 in 1995 (after the first negotiations between the unions and the new government), then to 17:1 after the first year of the three-year agreement, and finally to 15:1 in 1998. (See Bhorat, 1997 and Patel's chapter on collective bargaining in this collection) Closing the wage gap through an improvement in conditions of the lowest-paid was one of the COSATU unions' core demands, and reversed the long-standing emphasis in the PSC to reward those at the top at the expense of the mass of black unskilled workers.[9] The three-year agreement also sought to simplify and extend the range of non-wage benefits available to public service workers. For example, women were ineligible for the public service housing subsidy, while many General Assistants (and other categories, including some teachers) did not receive pensions and 13th checks as they were considered casuals. (See Baskin, Chapter 7)

The hallmark of the three-year agreement was the link between wage improvements and

[9] For example, De Klerk's above-mentioned unilateral 1993 5% wage implementation included a 20% increase for senior managers.

broader restructuring and transformation of the public service. (See Patel, Chapter 6 and Baskin, Chapter 7) Improved conditions for those at the bottom were a key element of this vision, as were a reduction in the unwieldy occupational structure to 16 grades, reducing wage differences between grades, introduction of a new skills-based grading system, and a measure of job security through a moratorium on employer-initiated retrenchments. The new grading system aimed at overcoming the existing complex and arbitrary occupational hierarchy, which had been shaped by imperatives of maintaining the racial and gender hierarchy of the public service, rather than by an objective evaluation of job content or workers' skills. It was meant not only to break the apartheid division of labour, but to provide workers with career paths that could deliver advancement and further real improvements while developing the skills base of the public service.

The agreement's increases were to be financed through 'right-sizing' the public service. According to Baskin, the parties agreed in principle to 'right-sizing': that 'the size of the public service be related to "available financial resources",' though the meaning of right-sizing remains contested. For government this meant reducing the public service wage bill as a proportion of public consumption expenditure, while the unions stressed that employment levels must be determined by service delivery requirements. In the context of a moratorium on retrenchments 'right-sizing' was to be achieved through a management plan and a skills audit to provide an accurate account of existing employment and skills levels and a link between these and service requirements. In addition, the agreement emphasised freezing or abolishing vacancies, a program of voluntary severance packages (VSPs), attrition, and in the last instance, retrenchment of 'supernumerary' officials, though only after all possibilities for 'redeployment' had been exhausted. Finally, the parties agreed to restructure pension benefits, both to make early retirement more attractive to long-serving public employees, and to achieve savings through a reduction in the state's contribution from 18% to 15%.

The high-water mark of worker participation

Not only did the post-1994 public service rapidly develop the familiar institutions of pluralist bargaining, but both unions and government alike shared a commitment to developing deeper forms of worker involvement in decision-making. (See Patel, Chapter 8) The workplace forum provisions in Chapter 5 of the new LRA stimulated important debates in South Africa on the merits of co-determination: the development of forms of consultation and joint decision-making between management and employees. However, Chapter 5 was not the stimulus for the extension of worker participation in decision-making; indeed, the public service was in fact exempted from the relevant sections of the new act.

To a significant degree the interest in public service co-determination was impelled by temporary institutions and practices developed during the transition. Progressive unions made a concerted effort to check the unilateral prerogatives of the apartheid state by promoting the creation of broad transformation forums in public institutions in which a measure of power would be shared out among stakeholders. Many of these innovations survived the transition and provided models for new forms of public governance which were prominently featured in the White Paper on the Transformation of the Public Service. (DPSA, 1995) The White Paper envisioned worker representatives becoming directly involved in fundamental policy formulation as well as in implementation and monitoring at the enterprise level.

At many levels prospects for worker involvement in decision-making were far greater in the public service than elsewhere. Central bargaining in the PSCBC not only gives unions a

Voluntary Severance Packages

VSPs were perhaps the most glaring failure. They were meant to cut public service employment levels while freeing up funds to pay for the wage and non-wage increases. They did nothing of the kind. According to the Presidential Review Commission, very few posts vacated by VSPs were in fact abolished; most were filled by new appointees. In some cases the very same public servant who received the VSP returned through the 'back door' as a consultant, though this practice violated the severance terms. As a result, 'although the long-term savings ... are ... likely to be much smaller than predicted, the short-term costs have been much higher ...' (PRC, 1998, 3.2.4.2)

The VSPs shed neither 'dead wood' nor undesirable 'old guard' employees, but rather provided a lucrative escape for public servants with marketable skills. These departures were felt particularly sharply in health and education. Crucially, the VSPs did not yield anywhere close to the kinds of savings that were expected. As such savings were to be a source for funding the general wage increases granted in 1996 and projected for 1997 and 1998, the failure of VSPs put intense pressure on the fiscal sustainability of the entire agreement.

The retrenchment moratorium

The VSPs are not the only examples of unintended consequences issuing from the three-year agreement. A similar fate befell the moratorium on retrenchments, seemingly a major union victory. According to Baskin (Chapter 7), the moratorium did not prevent the loss of nearly 170 000 jobs or more than 13% of the workforce as public service employment fell from 1,25 million in 1996 to less than 1,1 million at the end of 1998. Ironically the cuts fell most heavily on the constituencies organised by the COSATU unions that fought most vigorously for the moratorium. They were heaviest at the bottom grades, NEHAWU's membership, though there was also an 8,5% decline in the police. These changes - along with the rehiring necessary to fill vacancies opened by VSPs - had a dramatic effect on the skills profile of the public service. The total number of jobs in the lowest grades (1 to 5) declined by over 19% while those in the middle category (6 to 9) increased by over 7%.

As the decline in police numbers shows, the cuts did not follow delivery or development priorities. Instead they appear to have been motivated by managers' desires to defend their budgets by cutting back on the unskilled beneficiaries of the wage increases and extension and equalisation of benefits. However, employment growth in the relatively expensive middle-range categories put upward pressure on the wage bill and offset any savings from the job losses at the bottom. Declining employment delivered neither cost savings nor a closer fit between policy priorities and personnel. It was the worst of both worlds for both unions and government: neither good 'right-sizing' nor cost-saving 'downsizing'.

Financing the agreement: Lack of alignment between the budget and bargaining

Given these developments, it is not surprising that the fiscal basis for the 1996 increases quickly eroded. Total personnel costs as a percentage of the budget (excluding interest expenditure) increased from 46,6% in fiscal year 1995/96 to an estimated 50,6% in fiscal year 1999/00. The situation was worse in the provinces, where personnel spending rose from 53% of provincial budgets in fiscal year 1995/96 to more than 59% in fiscal year 1998/99. It is this rapid increase in recurrent expenditure that provoked government demands for a

powerful platform, but the scope of issues bargained extends beyond conventional distributive issues. According to Patel (Chapter 8) many unionists believe they have the ability to raise a wide range of issues in central bargaining and through transformation structures at the institutional level, and hence have little need for the comparatively modest powers available in Chapter 5 of the LRA. Moreover sectoral bargaining councils in education and the police allow for consideration of broader policy questions in those areas.

Given the improvements in wages and conditions of service, involvement in policy-making and implementation, and the moratorium on retrenchments, it is not surprising that the public service was one of the least conflictual sectors in the country from 1994 to mid-1999. (Andrew Levy and Associates, various) Where the public service had been perhaps the most strike-prone sector in the years 1989 - 1993, with health workers, police, and teachers embarking on lengthy strikes, from 1994 this changed dramatically. Except for a prominent wildcat strike by nurses, largely in Gauteng and the Eastern Cape, there were no major strikes in the public service during this period, and comparatively few person-days were lost due to strikes.[10]

The nurses' strike ironically demonstrated the efficacy of public service labour relations. Their actions were prompted by pent-up frustrations over wages and working conditions, especially the increased workload caused by the extension of free health services in 1994. Moreover, public service nurses were unable to express these demands due to the absence of an effective nurses' union.[11] Far from a repudiation of the emerging labour relations dispensation in the public service, the strikes were an unfortunately clumsy effort by one occupational group to find a way of processing their demands *through* the system. In the aftermath of the strike most nurses did join unions, and participated in subsequent bargaining rounds in the PSCBC. There has been no repeat of the 1995 wildcat strike.[12]

Assessing the three-year agreement: Quick fixes, deferred problems

If the three-year agreement contributed to labour peace, it was unable to produce the conditions for sustainable transformation. Each of its key elements came undone.

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[10] This does not imply that no time was lost due to protest actions, demonstrations and stoppages, as opposed to formal strikes. For example, SADTU used these quite effectively in their winter 1998 resistance to the Department of Education's plans to terminate the contracts of temporary teachers. Such disruptions have been prevalent at the provincial and at enterprise levels - particularly in education - and have a definite, though impossible-to-calculate impact on person days lost. Nonetheless, in the first five years of ANC rule there were few - if any - national or even sectoral strikes in the public service - a marked improvement over the early years of the transition to democracy.

[11] These frustrations intensified after the South African Municipal Workers' Union (SAMWU) concluded a collective agreement which provided impressive increases to nurses working in municipal clinics, who often work in close proximity to those employed by provincial governments. In comparing SAMWU members' improvements with those provided in the PSBC - where nurses' interests were poorly represented - provincial nurses quickly discerned the gains possible through collective action, though not the difficulties involved in developing collective organisation. (See Adler, 1995)

[12] This aspect of the nurses' strike has been widely misunderstood. For example Adam et al. (1997) claim the nurses struck 'against their own union', though at the time the vast majority weren't organised. Moreover, they take the event as evidence of 'the inability of emerging corporatist arrangements to cope with a situation bordering on anarchy' rather than as an example of the inevitably messy stages in the evolution of these very arrangements. (See Adam et al, 1997: pp. 150-151)

review of pay policy and for ending the retrenchment moratorium, proposals that would guide their position in the 1999 wage dispute. Increasing personnel costs were said to be 'crowding out' other spending.

For both sides this problem highlighted a larger issue: the lack of alignment between the government's budget process and the annual wage negotiations in the PSCBC. This problem would intensify with the adoption of the Medium Term Expenditure Framework (MTEF) from 1997. Under the MTEF budget planning would be projected forward in three-year cycles, largely fixing expenditure on the public service wage bill well in advance of PSCBC negotiations. As a result, collective bargaining would become less about the size of the wage bill and more about its division. From the unions' perspective this fundamentally undermined collective bargaining.

A skills based grading system?

If the sustainability of the wage increases came under scrutiny, so too did the supposed transformation in the basis for determining remuneration. The three-year agreement was announced as a fundamental shift towards a skills-based grading system, borrowed directly from developments in the private sector, particularly in the metal industry. It was on this foundation that other union-initiated remuneration reforms were premised: flattening the occupational hierarchy by reducing the number of job grades, narrowing differentials within and between grades, and closing the overall wage gap. The new system promised to provide workers' with opportunities for training and career - and pay - advancement.

In practice the agreement ushered in no such thing. In a detailed study of public service wages and grading, Jacklin and Machin (1998) argue that the three-year agreement failed to include other initiatives on which a skills-based grading system depends: training, changes to work organisation arrangements and a reformed performance appraisal system. The inadequate opportunities for training meant that workers - especially at the bottom - would have limited or no opportunities for advancing within the system, and would likely be consigned indefinitely to their existing broad band.

The consequences of failing to move to a real skills-based grading system were made worse by changes to the 'rank and leg' promotion system. 'Rank' promotions refer to advances between employment grades, while 'leg' promotions refer to promotions within a grade. Public servants are normally eligible for promotion every three years, or at a minimum every two years if they are deemed 'preferentially promotable.' The benefits of promotion are substantial: rank promotions can result in as much as a 20% improvement in income. In the main, advancement within a broad occupational band (composed of a number of ranks) depends neither on a vacancy nor on funding for the post, nor in practice does it require meaningful assessment. Though in principle workers must be deemed 'promotable', in practice almost no one is held back. The 'rank and leg' system amounts to a regular bonus for employees unrelated to either individual performance or a rational assessment of the public service's skills requirements. Indeed, if a higher grade position is unavailable, workers will be paid at the higher rate even while continuing in their old job. The implications for the fiscus and for 'right-sizing' are thus considerable. The 1996 agreement in fact made the problems worse through the mass promotion of Grade 1.

Recent figures from the South African Police Service illustrate the perverse effects generated by the promotion system (see Table 1.1). The fact that there are nearly five times as many

sergeants and twice as many inspectors as constables is a reflection more of police officers' desire for and success in achieving promotion to senior positions than of the country's policing objectives and of the labour requirements necessary for achieving these. Nor do the figures reflect the police officers' skills nor the real content of their jobs: in cases where officers have been promoted to the rank of sergeant, they may in fact be working as constables: only their title - and salary - have changed.

Table 1.1: Selected ranks and salaries in the South African Police Service, as at January 2000

Rank	Number of employees	Number of employees
Constable	11,217	34,557
Sergeant	55,312	40,881
Inspector	25,620	63,042

Source: Unpublished statistics, Department of Public Service and Administration.

In addition to rank and leg promotions, workers may also apply for promotion between the broad occupational bands - a 'post' promotion - but success depends on the availability of a vacant funded post and workers must possess appropriate qualifications. Grade 1 workers - including general labourers - may have been promoted en masse to Grade 2, but in the absence of proper training programs, they have few opportunities to gain the qualifications necessary for a post promotion into Grade 3 jobs, such as clerical positions. In general, the same applies to more skilled workers applying for promotion from Grades 7 to 8 - from clerical to administrative officer positions - though such advances are relatively easier than for labourers attempting to move up.

In short the changes to the grading system, in the context of 'rank and leg' promotions, produced destructive results. Not only is promotion expensive, but it remains delinked from either worker performance or the public service's employment needs while - in the absence of proper training programs - workers are effectively consigned to a life within their broad occupational bands. As Table 1.1 indicates, changes to the promotion system would not only allow a better fit between employment, remuneration and needs, but could in fact finance an expansion in employment at lower levels.

The three-year agreement was signed two months before the launch of the government's new Growth, Employment and Redistribution (GEAR) macroeconomic strategy. And while it is probably true that the deal could never have been struck after GEAR, the strategy itself was not responsible for the three-year agreement's contradictions. Even before GEAR the government had been committed to a reduction in expenditure as a proportion of GDP, and to a reduction in the public service wage bill as a proportion of total government spending to make resources available for infrastructure development and other services. This put government in a very tight box for achieving its aims of transforming the public service. The equalisation of conditions of service could come about either through maintaining employment levels while reducing wages and benefits or improving remuneration while cutting numbers. Both the unions and government accepted the latter formulation, though with a priority on attrition, freezing posts, eliminating ghost workers, and reprioritisation of expenditure. Expansion of the wage bill would put pressure on other forms of government expenditure, in the absence of an increase in borrowing or increases in revenue through

higher taxation or other means, such as privatisation. But these steps are not only politically difficult, but fiscally problematic in the context of an untransformed state unable to spend effectively those resources it already commands.

Given this context the three-year agreement was poorly designed: it was inadequately costed (Baskin, Chapter 7), while additional elements crucial to its success (like adequate training programs or a means to effect sustainable personnel reductions) did not materialise. Many of its possible consequences, such as the likely effect of VSPs - which were obvious to observers at the time - were not addressed. Its authors were generally unaware of the complexity of many public service systems, and entered agreements with little understanding of their likely effects. ANC officials were in fact dependent on the advice of 'old guard' senior civil servants, who often ended up drafting new regulations, but with more concern for protecting their own prerogatives than for promoting transformation.

If the three-year agreement is viewed as a way of transforming government under tight constraints, it must be the seen as a failure. However, it may be judged differently if viewed as a crisis management exercise adopted with imperfect information under extreme pressure following two years of relatively unsuccessful bargaining in the PSBC. Judged against these criteria it was a qualified success - certainly in terms of ensuring labour peace - though at the cost of avoiding tough choices and deferring the core problems that originally motivated the parties to find a solution.

From agreement to conflict: 1999 and beyond

If the negotiators in the PSBC were able to defer long-term problems, the participants in its successor body, the Public Service Coordinating Bargaining Council, had no such luxury. Not only were the defects of the 1996 bargain well known, but negotiations for a new agreement began in late 1998 in the midst of South Africa's worst economic crisis of the decade.

The unions' initial common position was for a 15% across-the-board increase, while government responded with an offer of an average 5,7% increase. This massive gap remained through the announcement of the budget in March. At a PSCBC meeting at the end of April the government proposed a task team to review salary progressions, but would determine for itself whether to increase its offer based on the task team's recommendations. At this point all the unions in the PSCBC declared deadlock.

In July the dispute was referred to arbitration, but within days the government improved its average offer from 5,7% to 6%, with employees in the lowest grades receiving 6,2%, and those at the top 3,5%. At the end of July, following a one-day strike led primarily by the COSATU unions, government's offer was improved to an average of 6,3%, with a 6,8% increase for teachers. By this time the unions had reduced their demand to an average of 7.5%, with a somewhat higher increase for teachers. (PSA, 1999; Fraser-Moleketi, 1999)

In early August a number of unions again embarked on a legal strike - supplemented by public demonstrations organised by unions that had stayed out of the earlier protest. This was an unprecedented development in public service labour relations: the first time that progressive and old-guard worker organisations pursued a common program of industrial action. In fact, the strike marked the transformation of many of the old-guard unions into a more robust form of unionism. To an extent they have begun to shed their diffidence and

politeness, and have made use of the new possibilities in labour law for exercising power.

At the same time, the unions linked to COSATU were caught between their commitments to their base and their participation in the alliance with the ANC. The tripartite alliance yielded many benefits in the past when the COSATU unions were able to break deadlocks through appeals to the party, and especially to President Mandela. In the run-up to the elections alliance discipline effectively diverted COSATU unions from pressing their case in the PSCBC or in the streets. And after the 1999 elections, the alliance route was effectively closed; indeed, leading figures in the ANC began attacking public servants' profligacy, labelling the unions as special - and selfish - interests. Indeed, informal efforts to broker a compromise were fruitless, and on 7 September government took the extreme action of unilaterally implementing its final offer - a step taken previously in the short history of public service labour relations only by F.W. de Klerk in 1993. (Fraser-Moleketi, 1999a)

In issuing its unilateral increase government offered to 'work' with the unions on the 2000/01 round of salary negotiations, and to develop a comprehensive remuneration policy. However, the invitation to return to a forum in which the unions had expended considerable energy in return for a minor improvement on the employer's offer – which was then unilaterally imposed - must have seemed eminently resistible. Indeed, at the time of writing the unions continue to boycott the PSCBC, on the grounds that the wage deadlock continues - and some of the unions have pursued the matter through arbitration.

A 'score card' approach to assessing industrial conflict is seldom useful, but is even less appropriate in this case. Notwithstanding that the employer imposed its solution on labour, neither party's positions' addressed the fundamental questions facing the public service on which their own agendas depend: effectively linking budget, staffing levels, remuneration, and delivery priorities. This failure will have important consequences in the future.

Given the enormity and difficulty of these questions it is unfortunate, but not surprising that the bargaining turned on the issue of wages rather than the unresolved transformation matters. Informants close to the PSCBC negotiations indicate that an agreement was in fact forthcoming on a new remuneration policy, including fundamental changes to the rank and leg system. However, given the obvious attractions the old policies hold for public servants, unions rightly calculated that they could not sell the agreement in the absence of a real wage increase.

Explaining government's refusal to compromise is more difficult. In part its position was informed by the dynamics of the June 1999 elections. It effectively delayed proceedings in the PSCBC until after the poll. Then, as a result of the ANC's overwhelming mandate for a further five year term - with a near two-thirds parliamentary majority - government was in a politically unassailable position from which it could substantially increase its autonomy. The ANC likely concluded that the public service unions would be unable to mount a strike that could impose sufficient costs to force government to reconsider its position. Given the co-ordination between new and old guard unions COSATU's strategic and tactical choices were limited by the need to maintain a common front with partners untested in mass action. In addition, its choices were restricted by the exigencies of maintaining public support, which would not be easily forthcoming if the unions were seen to be disrupting 'delivery' in their fight against a popular government. Both of these conditions - government's unprecedented freedom of manoeuvre and COSATU's equally unprecedented constraints - no doubt reinforced the position of those in and outside of government committed to a strict

interpretation of GEAR and the maintenance of fiscal discipline. The PSCBC negotiations enabled these interests to steal the line of march on the trade unions and 'hold the line' on wages.

However, government's resolute stance on wages creates a number of substantial problems on its side. First, its position defers consideration of restructuring for yet another year. Meanwhile, the animosity generated by the dispute creates its own dynamics that make it more difficult to come to terms with these issues, when in the future - as is virtually inevitable - the parties must seek each other out to implement meaningful transformation of public service labour relations. The problems are qualitative, not merely quantitative, and depend on agreement between the parties; they cannot be resolved through victory in a labour relations 'war.'

KEY ISSUES IN PUBLIC SERVICE LABOUR RELATIONS

It is difficult, in the current climate of mutual recrimination, to discern a means that would bring the parties back to good faith bargaining in the PSCBC. Yet it is equally difficult to perceive a route for restructuring the public service that does not pass through the PSCBC. On every dimension of transformation the parties are faced with balancing competing imperatives that have been mutually acknowledged. There are few 'win-win' choices, and even fewer instances where the options can be rationally or neutrally determined. What are the key issues?

The budget

Since the beginning of formal labour relations in the public service a fundamental - and still unresolved issue - has been aligning negotiations over wages and non-wage benefits with the budget. Government draws up the budget beginning in the year prior to presenting it in parliament, in consultations between the Department of Finance, national departments, and provincial governments. Now that the Medium Term Expenditure Framework is in place, these discussions occur within three-year rolling budgets that have to a major extent fix allocations. The budget is then presented to parliament where its allocations may be interrogated.

At its heart the issue concerns two competing and difficult-to-reconcile principles. Government draws up budgets, and parliament is supreme: it alone has constitutional power to approve money bills. On the other hand wage agreements in the public service depend upon good-faith bargaining between parties in the PSCBC not only over the allocation of funds available for salaries and benefits, but over their total amount. As personnel expenditure is by far the largest single item in the budget, even small changes can have a massive effect on government's ability to meet its other obligations.

A bargaining process that generates agreements with little regard to these wider obligations would either upset other public priorities or would effectively render the agreement a dead letter. But the reverse is equally problematic, where the integrity of the budget trumps public servants' right to engage in collective bargaining, not only about the allocation of expenditure, but about its overall size. At present this is the case. In 1999 the budget effectively capped the amount available on personnel expenditure; the unions were unable to persuade government to change the allocation significantly nor could they marshal effective

power to force it to do so.

This is a common problem in public services in every democratic society. However, particular circumstances in South Africa add to the difficulty. GEAR targets limit room for manoeuvre, but these are not the origin of the difficulty. The overwhelming imperatives of service delivery and infrastructure development place burdens on government that for the foreseeable future will put pressure on the size of the public service wage bill. Attempting to overcome the legacies of the apartheid division of labour while at the same time retaining skilled public servants makes it difficult to trade off the needs of one employee constituency against another. Moreover, given the single-party dominant political system and the leadership's tight discipline over the parliamentary caucus, public service unions can exert little pressure on government to change the budget, either through lobbying or through the electoral process.

There is no easy or logical answer, but the present arrangement is unsatisfactory: it has produced repeated conflicts since 1994 that are wasteful of time and resources and generate considerable ill-will. Furthermore it generates perverse consequences for government's own plans for public service restructuring. As Baskin notes in Chapter 7, limiting bargaining to dividing up a pre-set amount will tend towards majority rule at the PSCBC:

> and this is likely to take the form of 'across-the-board' increases, or larger increases at the lower end of the salary scale. In the medium-term this will lead to erosion of the bargaining unit as lower-end employees are replaced by contracting out arrangements, and as higher-end . . . employees attempt to leave the bargaining unit . . .

A way forward is offered by the Medium Term Expenditure Framework (MTEF), though this will severely test both parties. The MTEF enables all citizens to learn government's long-term budget priorities. Such transparency for the first time allows for accountability, as government can now be held answerable for its performance. A major problem arises, however, if the MTEF's three-year commitments are perceived to be imposed from above or are unresponsive to needs.

The MTEF includes - at least in rhetoric - mechanisms for popular participation in its formulation. But in practice such participation is de-emphasised by government, whose priority has been to establish executive authority over the budget process and to insulate it from external participation. (Gelb and Bethlehem, 1998) Such insulation effectively extends to parliament, notwithstanding the invocation of the 'supremacy of parliament.' Arguments that prioritise parliament's supremacy as against public service unions' involvement in the budget obscure the fact that parliament's budget-making powers are severely limited. Though the constitution gives parliament the power to amend money bills, such powers must be activated by a separate act - which has not been passed. This state of affairs 'renders the [parliamentary] budget process largely symbolic as the budget is determined wholly by the executive with Parliament having little or no say in its contents.' (Adair and Albertyn, 1999)

The test for government will be whether it will tolerate even minimal forms of involvement in developing MTEF priorities - including the allocation for personnel expenditure - from civil society groups, including the public service unions. This would be in line with the values expressed in the White Paper on the Transformation of the Public Service and the Presidential Review Commission report, both of which stress civil society partnerships and empowering citizens to share the responsibilities of governance. (PRC, 1998: 3.1.2, 3.2.3)

At the same time such participation would present a major challenge for the public service unions. It would require formulation of initial negotiating positions a year in advance, development of sufficient economic research capacity, and the development of cadres to engage with the MTEF process at the many provincial and departmental sites where and when it occurs. It also requires sufficient sophistication to engage with state technocrats and other stakeholders and the will to press the matter if their approaches are rebuffed, through public campaigns if necessary. Short of such an effort, their wage claims will carry little sympathy if presented as a fait accompli after the budget has been tabled in parliament.

Bargaining structures

Public service collective bargaining structures grew in equal parts from improvisation and imitation. Educators and police were able to gain a measure of recognition as a result of the crisis precipitated in these sectors by the struggle against apartheid. Whether or not there was a legal basis to do so the authorities in these sectors were forced to address workers' collective demands simply to ensure the continuation of state services in these areas. (See Garson, Chapter 9 and Marks, Chapter 10) The separate existence of bargaining councils is thus a by-product of the conflict that attended democratisation, reinforced by the fact that historically ministers in these areas have legal authority to set wages and conditions of service.

But the structures also evolved in imitation of the private sector and the development of centralised bargaining elsewhere in the economy. The PSBC was created as a vehicle for bargaining at the highest level of the public service as a whole. Its creation was facilitated by the existence of the PSC; unlike other sectors of the South African economy the determination of labour issues in the public service was already very highly centralised. In an odd way the establishment of centralised bargaining could occur much faster in the public service than elsewhere, as it meant transforming the existing PSC into a truly bipartite structure.

However, unlike almost any other sector, the public service was composed of but one employer and a multitude of distinctly different 'industries' that were further divided into 9 different provinces and more than 30 national departments. The federalism implicit in the constitution further complicates matters: some departments of state - education, welfare, health - are joint competencies of the national and provincial governments. Most of the managers and workers in these areas are in fact employed by the provinces. To further complicate things, different provinces organise their affairs in different ways, combining in one department functions that are housed in separate national departments. It has been a daunting task developing bargaining structures that suit the contours of the public service, without compromising the coherence of the sector as a whole and centralised bargaining. The same can be said about the kinds of issues bargained and the levels at which they are determined.

The model of industry-wide bargaining councils provided under the new LRA was crudely extended to the public service, creating an unwieldy mix of more than 40 provincial and departmental bargaining institutions, alongside the PSBC, the Education Labour Relations Council (ELRC), and the National Negotiating Forum (NNF). (Adair and Albertyn, 1999) The framework was not wanted by anyone, however a replacement was not immediately perceived.

Notwithstanding the conflict in the PSCBC over wages, considerable convergence occurred over the shape of bargaining. (See Baskin, 1999) Unfortunately not all the issues were resolved, nor formalised in agreements, and progress was thwarted by the dispute. In 1999 the old NNF was replaced by a new Safety and Security Bargaining Council (SSBC), and its membership was extended from police to all employees of the South African Police Service, including civil servants. In 1999 two other structures were established, the Health Sector Bargaining Council (HSBC) and the General Administrative Bargaining Council (GABC). The former includes all employees of the Departments of Health and Welfare (national and provincial) as well as public health and health and welfare professionals in other departments. Given that health is a provincial competence, the HSBC intends to establish provincial chambers for negotiating more detailed agreements. The GABC includes all employees not covered by the other bargaining structures. The ELRC continues to exist, and has developed provincial chambers in each province.

If considerable progress was made on the structures of bargaining there was less agreement about where issues are to be bargained. The underlying issue is finding a balance between common standards across the public service and accommodating the specific needs of the different provinces and departments. If wages and conditions of service are negotiated solely at the PSCBC, the sectoral and provincial institutions will be largely irrelevant. On the other hand the complete devolution of bargaining to the sectors and/or provinces could lead to intolerable conditions: either growing inequality between provinces or competition in which sectors attempt to outbid each other in pursuit of skilled staff. Solutions include converting bargaining in the PSCBC into agreements over minimum and maximum wages and progression ranges, rather than actual wages, or allowing it to ratify agreements made in other bargaining councils.

Restructuring management

A strong system of labour relations in the public service depends not only on strong unions, but also on capable management. However, the existence of public service management - in the true sense of the word - is a post-1994 phenomenon, and even then more rhetorical than real. One of the main aspects of transformation has been overcoming the centralised structure of administration symbolised by the old PSC. As Adair and Albertyn write in Chapter 5, this logically entailed the devolution of authority to lower levels of the public service and converting administrators into managers endowed with both power and responsibility.

As mentioned in the previous section, the Ministers of Education and Safety and Security already possessed powers to determine terms and conditions of employment for educators and police. Amendments to the Public Service Act in 1996 extended these powers to national ministers and, at the provincial level, to Members of the Executive Councils (MECs), who were given original powers to organise their departments, including the hiring and dismissal of employees. This parallels other legislation and regulations that make 'executing authorities' responsible for financial matters in their departments. The PSC's rigid provisions for disciplining employees were replaced by a collective agreement reached in the PSCBC in January 1999, which now allows for discipline to be managed according to standard labour-management procedures in a flexible manner and at the appropriate level.

However managers have not yet been given power to determine pay and conditions of service for their employees. These powers are still vested in the Ministers for Education and Safety and Security for educators and police and the Minister for Public Service and Administration

for all other public servants. In practice these are determined through bargaining in the PSCBC. Even the new powers granted under the 1996 amendments to the Public Service Act are limited. According to Adair and Albertyn 'executing authorities' may determine the organisational structure of their departments:

> however they may not retrench surplus employees and they must organise their department within the prescribed nationally determined grading system, which is inflexible and does not take account of sectoral needs and differences.

Though extending responsibility with one hand, the amendments take power away with the other, as executing authorities' scope for autonomous action is highly constrained by decisions at the highest level. Moreover, 'even within the departments and institutions, all decisions, no matter what they are, have to be made by the highest authority' as executing authorities who do not readily delegate powers to lower levels of management in their departments.

According to Adair and Albertyn, 'decision-making thus remains highly hierarchical with senior and middle management having very little decision-making power.' The state of affairs does not foster accountability and responsibility, nor does it allow for meaningful interventions by workers or their trade union representatives, except at the very highest levels. Notwithstanding massive efforts to transform the old public service, and the increasing importance of collective bargaining in place of the unilateral determinations by the old PSC, 'managers still do not "manage," but are responsible for ensuring that the employees abide by a complex set of rules and regulations, rather than concentrating on output and service delivery.'

The extension of financial responsibility to senior managers under these constraints produces perverse effects. Managers must fit their decisions about personnel deployment into calculations for meeting their financial obligations within fixed standards on wages and conditions of service. Personnel decisions are thus oriented towards budget concerns instead of being rationally linked to service delivery needs. Management tasks are made even more untenable as retrenchment has been blocked by the three-year agreement's moratorium, while redeployment is difficult, and dismissal - even for cause - is so time consuming as to be virtually impossible. The present conditions discourage creativity and initiative, and break the link between spending, development priorities, and the deployment of personnel.

But even if one could find an appropriate balance between national norms and standards and decentralised decision-making, this is not the most profound management problem. Far more difficult is overcoming the legacy of apartheid-era hiring practices that allowed vast numbers of unqualified people to become managers. A system that is able to develop centrally-determined norms and standards while encouraging managerial flexibility depends ultimately upon skilled managers. Indeed it demands highly sophisticated men and women who can understand and effectively maintain this delicate balance. These are not - in the main - the kinds of managers that the apartheid public service bequeathed to the new order. Their lack of proper managerial training is most glaring in the areas of financial management and labour relations, which seriously weaken their effectiveness in linking budgets and personnel with policy objectives. (DPSA, 1997)

These problems are of course uneven: some provinces are worse than others (especially those that absorbed former TBVC and SGT administrations), and the same is true of national

departments. But a number of high-profile public scandals have brought the problem of public service management into sharp focus. Recent reports from the Auditor General have shown that many departments are forced to roll-over their allocated budgets because they cannot disburse money. The Departments of Welfare and Health, for example, were unable to spend substantial portions of their national funds for poverty relief and AIDS prevention. Allegations of wide-spread corruption in the Department of Correctional Services have revealed that practices of patronage common in the old regime persist into the new, albeit deployed along ethnic - rather than merely racial - lines. These three cases are extremely worrying as they occurred at the national level of these departments, where it is assumed managerial competence is greatest.

Adair and Albertyn argue that new legislation will need to be passed that completes the transformation of management in the public service. Nonetheless the task of developing and training management to perform the responsibilities thrust upon it remains an overwhelming - and exceedingly long-term - priority of transformation. Good management is a necessary condition for good labour relations in the public service.

Right-sizing

As mentioned above, one unfortunate consequence of the 1999 wage dispute was to defer yet again progress on 'right-sizing' the public service. The unintended consequences of the three-year agreement's retrenchment moratorium and VSPs have still not been addressed, which has stymied efforts to align the size and deployment of staff with development priorities and the budget. Right-sizing still means different things to management and labour. For the former the priority has been reducing the public service wage bill as a proportion of public consumption expenditure, while for the unions employment levels are to be determined by service delivery requirements.

However both parties - at least in principle - recognise the other's priorities. Cutting the wage bill to reduce public expenditure without regard to the government's development goals makes a mockery of the budget, transforming it into an end in itself rather than a means to achieve political goals. In principle this position is rejected by government in all its policy documents, not only those on the transformation of the public service. The Presidential Review Commission observed that right-sizing:

> should be located within the macro-economic constraints established by GEAR, but should nevertheless be driven primarily by the need to improve the efficiency and effectiveness of service delivery rather than by narrow budget considerations. (PRC, 1998:3.2.7)

The DPSA's recent report on its skills and service audit suggests that restructuring is a qualitative matter that does not easily produce savings, and that savings may come at the cost of affecting basic service delivery. (DPSA, 1999) The audit revealed that the public service as a whole is not overstaffed; rather many departments have inappropriate staff complements for their needs. For example provinces that incorporated old homeland bureaucracies have too many unskilled labourers, but a serious undersupply of higher-level managers, professionals, and support personnel. In another example, the audit showed that many township and ex-homeland schools suffer from a severe undersupply of support staff, essential to effective education. The report advocated an active redeployment strategy, rather than simple retrenchment (itself an expensive step). Moreover, the audit confirmed Baskin's

findings in Chapter 7 that while unskilled employment had declined, the number of skilled (and higher paid) employees - especially teachers - had expanded.

On the other hand, determining staffing by reference to service delivery alone - without reference to budget constraints - is even more problematic. Yet this position is rejected - at least implicitly - in a number of union policy documents. For example, the report of COSATU's September Commission on the Future of the Unions advocates an ambitious program for 'building a public sector that can deliver efficiently and effectively, and improve the working life of the members of the public sector unions.' (COSATU, 1997: 3.2) For COSATU this entails 'taking some responsibility for co-managing transformation,' by exposing corruption and ghost workers. At the same time, the approach acknowledges:

> there are limits on government resources, and unlimited needs. COSATU should reject the limits defined by GEAR, and continue to contest them. But even without GEAR, there would be limits. This implies trade-offs between different priorities.

COSATU still believes that a 'bigger, more labour-intensive' public service is necessary, but accepts that 'Participation with government . . . would mean that whatever choices are made, even hard ones, the unions would be willing to take joint responsibility for their implementation.' A similar position is at least implicit in a recent assessment of the public service strike written by two leading NEHAWU unionists. Though they disparage the notion of 'crowding out,' they do not reject the idea of trade-offs between components of the budget. (Makhura and Phadu, 1999)

There is thus - in principle - considerable overlap between positions. It remains to be seen whether the parties are able to reach agreements that resolve this key problem of transformation. And, even if agreements are reached at the PSCBC, it is questionable whether either management or labour have the capacity to implement and monitor these at sectoral, provincial, and institutional levels. Even if both sides find an accommodation that enables them to escape from the current impasse, neither has the capacity as yet to ensure compliance from their constituencies. Faced with an unreliable management echelon itself in need of change, management's victory in the 1999 bargaining round may prove short-lived: it will find it difficult to fight a two-front war with both labour and its own managers.

This state of affairs does not augur well for public service transformation. It also suggests a third possibility: that many managers and workers will find common cause in defending their inherited privileges against the restructuring agendas advanced by both government and organised labour. In this scenario, poor management structures may permit both old- and new-guard civil servants to direct public resources towards maintaining their own positions. There are many disturbing signs - as in the Department of Correctional Services - that apartheid-era patronage not only persists, but has opportunities to flourish in a situation precariously poised between the paternalism of the old order and the rational labour relations of the new. There is a considerable danger that the contemporary public service will recapitulate the situation under apartheid where the formal rationality of bureaucratic rules become increasingly distant from the real paternalistic relationships between management and labour. The public service may have been brought under the LRA, but it has not yet been remade in its image.

Faced with these possibilities, recent suggestions by ministers and senior officials that the public service be exempted from many provisions of the LRA and the Basic Conditions of

Employment Act may in fact backfire. Rather than promoting management hegemony or even fiscal discipline, such steps might in fact encourage practices of patronage quite at odds with formal models of managerial control. Though many may reject the notion, an employer truly interested in transformation of the public service and service delivery may have much to gain from bolstering effective unions and developing sound labour relations practices.

CONCLUSION

In the few years since South Africa's first democratic elections, incredible progress has been made in the development of a modern system of labour relations in the public service. Not only have unions and bargaining structures been established, but these have reached successful agreements on a range of distributive and non-distributive matters. The system has, for the most part, produced labour peace in what was until recently a storm-centre of industrial protest. These are remarkable achievements, not only considering the distance the parties have had to travel from the racist and authoritarian past, but also considering the fiscal and skills constraints facing the public service.

At the same time, the labour relations system has been more adept at deferring major problems than resolving them. In part this stems from the inherent difficulties of the issues. In part it is a result of mistakes, and the unintended consequences of agreements reached in haste and under political pressure. In 1999 the system broke down in a dramatic wage dispute, which saw government acting in a unilateral manner not seen since F.W. de Klerk's presidency. Yet the attention given to the dispute obscured the agreements made over the same period on the structure of bargaining, management, and other issues. It also masked the fact that the parties' principled positions are not significantly different and that they have a mutual interest in reaching an accommodation.

This does not imply that the new labour relations system can deliver agreements on the outstanding issues. The private sector has had nearly three decades in which to develop labour relations institutions, and effective managers and trade unionists to make them work. The public service has to catch up in less time, while facing more daunting issues, higher expectations from its intended beneficiaries, and the full glare of publicity when things go wrong. The stakes are high: labour relations will either unlock or slam shut the door to public service transformation, and will help determine whether the state can fulfil its obligations for development. To a great extent the fate of democratisation in South Africa rides on the outcome.

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