

Assessing the Effectiveness and Efficiencies of the Public Bargaining Council: A South African Perspective

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Abstract:

A bargaining council is a body created by the Labour Relations Act 66 of 1995 to form part of the dispute resolution system. Failure by parties to resolve grievances through the procedure impacts the employment relationship since parties are assumed to have shared goals and a collective responsibility to safeguard the success of the workplace. Qualitative research approach was employed as the study intended to explore the effectiveness and efficiencies of bargaining councils in the public sector. An exploratory research design was adopted in the study as this study was exploratory in nature. Three themes emerged from this study to assess the effectiveness and efficiencies of the Public Bargaining Council. These are improper dispute referral, capacity challenges and Inadequate work experience. Thus, the study recommends that the bargaining council should develop training programs for public service employees and union officials to educate them about the council's processes, jurisdiction, and proper dispute referral procedures. Unions should conduct workshops to ensure their members understand the bargaining council's processes, especially regarding the jurisdictional scope of disputes. The study further recommends that all parties involved in dispute resolution must comply with the bargaining council's rules.

Keywords:

Dispute, Bargaining Council, Public Sector, Unions, Dispute Resolution

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Introduction

The landscape of employment relations in South Africa has undergone significant transformation since the advent of democracy in 1994, with a key component of this transformation being the establishment of the Public Service Co-ordinating Bargaining Council (PSCBC). The PSCBC was created to provide a platform for the negotiation and resolution of disputes between government employers and public sector trade unions (Matete, 2014; Shabangu, 2024). As a central body in South Africa's labour framework, the effectiveness and efficiency of the PSCBC are critical to the functioning of the public sector and its relations to the public.

However, there are challenges facing bargaining councils in resolving disputes effectively. A report by the General Public Service Sector Bargaining Council (GPSSBC) 2018/2019 acknowledges that the dispute resolution system is faced with many challenges. These included but were not limited to matters that are not correctly referred and postponement of hearings by parties. This results from a lack of capacity skills by applicants, union representatives and Commissioners. Matters incorrectly referred to the council and cannot be attended to are those with wrong referrals, incorrect citations, no proof of service and wrong jurisdiction. As such those matters are not handled as council regard them as not properly referred and out of jurisdiction. A report by GPSSBC 2018/2019 further shows that during 2017/2018 and 2018/2019, the GPSSBC received 1494 and 2580 cases, respectively, for resolution and in the year 2018/2019, 291 postponements applications were filed, of which 216 were not granted and 75 were granted.

Bargaining councils remain the primary mechanism for dispute resolution in South Africa (Matete, 2014). A report by GPSSBC 2018/2019 shows that during 2017/2018 and 2018/2019, the GPSSBC received 1494 and 2580 cases, respectively, for resolution. The Public Service Co-ordinating Bargaining Council (PSCBC) received 977 referrals, as stated by the Public Service Co-ordinating Bargaining Council Annual Report 2017/2018. Additionally, 456 referrals were submitted to the PSCBC from 01 April 2020 to 31 March 2021 compared to 727 referrals received in the previous reporting period, resulting in a 37% decrease in the referral rate (PSCBC Annual Report 2020/2021). A total of 1606 cases were scheduled for conciliation hearings, and 5473 cases were scheduled for arbitration hearings (General Public Service Sector Bargaining Council Annual Report 2019/2020). Additionally, the bargaining council has not resolved these referrals, which affect the harmonious employment relationship between parties. It is against this background that there is a paucity of empirical research that explore the effectiveness and efficiencies of Public Sector Bargaining Council in the South African context. Therefore, the current study aimed to explore the effectiveness and efficiencies of the bargaining council in handling dispute resolution cases in South African public service sector.

Literature Review

This section of the paper will present literature related to the study.

The Legal Framework Regulating Dispute Resolution in South Africa

To harmonise and strengthen workplace interactions between employers and employees, both sides should base their concerns on Labour Relations Act 66 of 1995's (LRA) rules and regulations (Legodi, 2018; Maphiri, 2023). Therefore, LRA regulates the resolution of disputes in Both the public and private sector (Skosana, 2022; Lancaster, 2024). The following are the legal frameworks regulating dispute resolution. The Constitution of the Republic of South Africa (Constitution), as the country's supreme law, surpasses all other legislation (Phiri, 2015). The LRA regulates dispute resolution procedures, and the Act also establishes bargaining councils (Matete, 2014). The Public Service Act 103 of 1994 regulates a variety of aspects pertaining to the functioning of the public service as a whole; it provides explicitly for appointment, promotions and transfers, unlike other legislations such as the Basic Conditions of Employment Act and the Labour Relations Act that are silent on these issues (Sekgobela, 2015). According to Borat, van der Westhuizen and Goga (2009), the other important piece of legislation in terms of bargaining councils is the Basic Conditions of Employment Act (BCEA) of 1997 wherein its amendments establish, enforce and regulate the basic conditions of employment, and this includes the regulation of working time and hours of work including overtime, different categories of leave(annual, sick and maternity), particulars of employment and remuneration, termination of employment, prohibition of employment of children and forced labour.

Causes of Labour Disputes in the Public Sector

Disputes can be defined as a highly formalised representation of conflict in a working environment involving the inability to deal with grievance. Most complaints in the public sector concern claimed unfair labour practices (van Staden, 2021). According to Mboh (2012), there are numerous reasons for labour disputes and common unsettled grievances. Dissatisfied employees at their employers file grievances according to acceptable and established processes, failure to reach the desired outcome results in disputes being filed against the employer. Huang and Sun (2024). regards the economic environment as the outbreak of labour disputes, considers communication as another cause of disputes, and considers that communication in an organisation has much to do with management and staff interaction. Communication between different levels of an organisation provides only the methods to ensure recognition of differences, build an enhanced understanding, and find adaptation accommodation within a mutually acceptable resolution when the root of a labour conflict is disparities in objectives and interests (Qwele, 2009).

The Dispute Resolution System in South Africa for Public Service Sector

The public service is South Africa's largest employer, accounting for about 20 percent of all formal employment and about 10 percent of the entire labour force (Maxhobandile & Yusuf, 2024). The term public service is defined in section 213 of the LRA to mean national departments, provincial administrations, provincial departments, and organisational components contemplated in section 7(2) of the Public Service Act, 1994 (Oodit, 2014). This study predominantly focuses on the efficiency of these bargaining councils as tools for dispute resolution (Matete, 2014).

Bargaining Councils

A bargaining council is created by the Labour Relations Act (LRA) to form part of the dispute resolution system (Kemp, 2016). Bargaining Councils are accredited by the CCMA to conduct conciliations and arbitrations and to handle various conflict resolution tasks, such as resolving disputes over things like unjust dismissals, unfair labour practices, mutual interest conflicts, interpretations of collective agreements, severance pay disputes, and pre-termination arbitrations. Furthermore, Section 27 of the LRA stipulates that a sectoral bargaining council can be set up by any number of organisations or trade unions by:

1. assuming a constitution which satisfies the obligations of section 30;
2. registering the bargaining council under section 29.

The LRA specifies the purposes and authority of bargaining councils and cooperative employer-union bargaining organisations (Skosana, 2022). The appropriate trade unions represent the interests of workers in bargaining committees. Bargaining councils, however, remain the primary mechanism for dispute resolution in South Africa (Matete, 2014). They bring together union and company officials to reach agreements on collective bargaining that govern the working relationship (Hagemeister, 2018). Bargaining Councils serve two primary purposes. The primary responsibility is to ensure the negotiation of collective agreements about work terms and conditions. The dispute resolution role of bargaining councils applies to all organisations, employers and workers under the council's jurisdiction, irrespective of the idea that they might be members of the trade union and employers' organisations that are parties to the council (Kwakwala, 2010).

Measuring the Effectiveness and Efficiency of the Bargaining Council

The LRA stipulates that disputes should be resolved in the Bargaining Council through conciliation and arbitration. Disputes are inevitable in any employment environment and must be adequately addressed to ensure a healthy working relationship between the parties involved (Abwunza, Peter & Muigua, 2021). The effectiveness of this research includes the extent to which the law may address conflicts and ease of access, simplicity, consistency, predictability, and the delivery of equitable results to parties involved

in labour disputes through the systems in place (Mboh, 2012). Common disputes encountered have to do with unfair labour practices and unfair termination of employment contracts. Rahimkulova (2021) emphasised the dispute resolution role. They state that the growth of procedures and systems for avoiding and resolving disagreements reflects increasing diversity and complexity of individual conflicts. In the public service sector, arbitration is preferred as a mechanism for dispute resolution because it is legally binding, fair, and neutral and provides significant procedural flexibility, mainly in selecting and using the arbitral regulations to be applied during the resolution of a dispute.

When a labour disagreement must be settled as soon as feasible (Blignaut, 2018). Mboh (2012) defines an efficient conflict resolution system that quickly resolves conflicts with high settlement rates. In their study, Abwunza, Peter, and Muigua (2021) demonstrate that arbitration proceedings have been lauded as one of the greatest techniques for settling disputes, mainly owing to their perceived speed, cost-effectiveness, and finality. Nevertheless, Abwunza et al. (2021) demonstrate that arbitration has fallen into disfavour, with several concerns voiced about its efficacy in terms of delays, enormous costs, and a large number of contested rulings, leaving many users unsatisfied.

Methods and Data

The qualitative research design was used in this study to investigate the effectiveness and efficiencies of the Public Bargaining Council in the South African context. The study population consist of both male and female aca-demic staff members at a selected higher education institution in South Africa. The interpretivist paradigm was utilised in this study because participants and their interpretations, perceptions, meanings, and understandings about the bargaining council activities were the primary data sources. A purposive sampling method was employed, selecting ten participants with relevant roles and experiences. Pseudonyms were assigned to maintain confidentiality as illustrated in Table 1. Data was collected through semi-structured interviews with participants to understand their experiences within the bargaining council's operational activities. An appointment was made with the participants and interviews were conducted virtually via the Zoom platforms; therefore, participants connected from their places. Before an interview, each participant was provided with a letter of consent. All ten participants conceded and confirmed their participation in the study. A thematic data analysis approach was used to identify and organize themes within the collected data. This approach aims to draw meaningful insights from the participants' experiences and report realistic conclusions.

PSEUDONYM	RESPONSIBILITIES
MA	Dispute resolution management
MB	Dispute resolution management
MC	Dispute resolution management
MD	Dispute resolution management
ME	Dispute resolution management
MF	Dispute resolution management
MG	Dispute resolution management
MH	Dispute resolution management
MI	Dispute resolution management
MJ	Office Support and communications management

Table 1: Profile of participants.

Findings

After conducting a thematic analysis of interviews, three key themes emerged: (1) improper referral of disputes, (2) capacity challenges, and (3) inadequate working experience. The study found that efficient dispute resolution is closely linked to the availability of relevant skills and strong relationships. When the right skills are applied effectively, organizations save both time and costs by implementing correct solutions from the start.

Five participants highlighted that union representatives lack knowledge and experience in dispute resolution, which delays the resolution process. They suggested that training or education on dispute resolution processes is necessary for union representatives. Additionally, one participant noted that commissioners negatively impact the efficiency of the bargaining council. They argued that commissioners fail to render their awards within 14 days, provide low-quality decisions, and often do not quantify their awards, which hampers effective dispute resolution and execution of the awards. The themes are discussed below.

Theme 1: Improper Dispute Referral

All ten participants indicated that the LRA and the rules of the bargaining council underpin the bargaining council. They all agreed that the screening of dispute referral forms is essential for effective dispute

resolution, as it ensures that disputes comply with council regulations, fall within its jurisdiction, and meet necessary procedural requirements. The screening process also helps identify whether forms are properly served to the respondent party and if any condonation is needed, thus preventing delays.

However, the participants noted that many public servants struggle to complete referral forms correctly, which negatively impacts the council's efficiency. Common issues include missing signatures, lack of proof of service, incorrect details, or the use of incorrect forms. This forces the council to return the forms for correction, further delaying the process. Some referrals are also made to the wrong council due to improper jurisdiction selection, which also causes delays while the case is redirected.

Participants mentioned that, in some cases, the bargaining council does not have jurisdiction over the matter, but delays arise due to non-compliance with referral requirements. Additionally, when contact details are only provided for union representatives, delays occur as the council must wait for the applicant to clarify the referral form. Misdirected referrals, such as cases meant for other councils like PSCBC or ELRC, also lead to further delays when the correct council is identified, and condonation is needed.

Despite some uncertainty about the number of referrals received, all participants highlighted that improper referrals are a significant challenge, contributing to delays in case resolution.

MA supported the statement and stated that:

"The 479 referrals that I have just said, if you unpack them, you will find that 20% of those referrals are not properly referred. The referral form is not properly referred because the contact details are not there. We check if the referral form has been served to the employer, if they did not serve, it is not properly referred, they need to serve."

In support of the not properly referred disputes **MJ** added and said:

"You find that the nature of the dispute is not ticked or more than one nature of disputes is ticked and should that be the case the form is considered to be invalid. What we do then we send the letter to the Applicant explaining that we have picked up that the forms was not correctly filled in or there is some information that is missing, therefore council will not be able to process the form further. If there is a problem found, that affects the efficiency of the bargaining council in setting the matter down because if the matter was supposed to be handled by case management, the matter is still sitting on screening, the matter is still sent back to the Applicant for corrections to be made unlike in an instance where there is no errors, there is no mistakes and the date is issued by the case department."

The ten participants confirmed that other disputes remain not properly referred due to wrong jurisdiction been picked up at the screening process. Wrong jurisdiction in this regard contribute to matters not been set down timeously. In support of this **MC** stated:

“There is a challenge in terms of the correct forum, the scope, because even the CCMA sometimes does not understand our scope. The CCMA will transfer a matter that should go to ELRC or PSCBC to GPSSBC”.

MJ supported the comment as said by **MC** and said:

“In an instance where the matters are referred to the wrong bargaining council like the matters be referred to us and are supposed to go maybe to a different bargaining council. Efficiency is affected in a negative way cause this delays the process meaning that we have to redirect the Applicant to the correct bargaining council so that they can try and resolve the matter in that bargaining council. So in terms of like processes there is some sort of slow down so there is definitely an affect and is a negative affect because matters are not set down maybe as or when they were supposed to be set down.”

The additional view came from **ME** who added:

“When the public servant for example applies for position in government and they get the position, the respondent or the department doesn’t usually inform this applicant that there is a forum like the GPSSBC that you can go to if you have a dispute, they do not inform them that, or the union rep for example does not inform them that the GPSSBC is there in case of their dispute with your department. Public servants are not aware, some of them are not aware that we actually exist and when they do have a dispute they immediately run to the CCMA which is then an incorrect forum to apply at and that obviously cause a delays to the applicant’s dispute and it might turn out that because the applicant went to CCMA that took them ten days to respond, they might need ten days next to apply for conciliation, then they need to go through the whole condonation process which is another 28 days usually. Public servants are not aware that we are there and that we can assist them if they have a dispute.

Theme 2: Capacity Challenges

There is a link between speedy resolution, skills and close relationships. Where relevant skills are available and appropriately employed, organisations reap the benefits by saving costs in both financial terms and in time because correct solutions are adopted and implemented in the first instance. Five participants viewed union representatives as having no knowledge and experience of dispute resolution processes and regarded this as one factor delaying the completion of matters when they further mentioned that union representatives need to be trained or educated in the dispute resolution processes. Capacity challenges were an overarching theme when participants were questioned on the challenges the bargaining council encountered with dispute referrals, the time frame to set cases down for conciliation and arbitration, and if all matters are set down timeously. In response to the question. Five participants viewed the union representatives as lacking knowledge and experience of dispute resolution procedures, leading to prolonged disputes. In addition, one participant viewed commissioners as

impacting the efficiency of the bargaining council in dispute resolution. He mentioned that commissioners do not render their awards within 14 days. They do not render quality awards; they do not quantify their awards then it becomes difficult for dispute resolution to be effective because how then does the award be executed when it is not quantified.

It has been found that to promote effectiveness the bargaining council is able to set the matters down for conciliation and arbitration accordingly in terms of the rules and required timeframes. However, it has been found that Commissioners delays the expedition of disputes by not submitting the arbitration awards within fourteen days after the completion of the arbitration. In line with this **MC** remarked:

"I can include even commissioners because Commissioner play a role. The commissioners they do not render their awards within 14 days. They do not render quality awards, they do not quantify their awards then it becomes difficult for dispute resolution to be effective because how then do you execute an award that is not quantified, so it starts with commissioners. Commissioners they must know their role at the hearing, they must make sure that they know the salary of the applicant, whether the applicant has got a payslip, if it's a bonus, how much the applicant is claiming. "

However, according to **MJ**, the other reason that leads to the matter not to proceed is when the Commissioner does not attend the hearing. In this regard he stated:

"We do have such matters when a matter was supposed to sit down but it does not sit and one of an example I could give is when the Commissioner is double booked, you find that there is the employee and the employer are t the council, the interpreter if one was asked, but you find out that the Commissioner is unavailable and we are finding not to be in a position, remember we have case that we call, cases that were already heard, in such an instance, we cannot get a new Commissioner, the Commissioner who was dealing with the matter is the same Commissioner that needs to deal with this matter, so if there is such a case, Council has no choice but to postpone the matter."

MA specified that as the bargaining council they have turnaround times to conclude the matters. She said their turnaround time period to conclude conciliations is 23 days and for arbitrations is close to 90 days. However, there are postponements taking place in- between the hearings, with regard to this she remarked:

"In-between we still have the postponements, we still have issues where parties cannot connect because of connectivity issues. There is whole range of reasons why the case will delay."

In support of the argument by **MA** and **MH** added:

"And then some of the reasons why the matter will not continue will be in the virtual processes, the issue of connectivity, and the issue of data unavailability and also our issue as well which in this case our load shedding."

MC also supported the view and stated:

"The bargaining council does enforce its rules, where the application is late, that application can be refused and parties may be asked to appear before the commissioner and argue."

Theme 3: Inadequate Work Experience

Findings revealed that union representatives have no knowledge and experience of dispute resolution processes. This was found to be one factor that delayed the completion of matters as it was discovered that union representatives need to be trained or educated of the dispute resolution processes. The findings further revealed that Commissioners play an important role in the bargaining council. In receiving the dispute referral forms for dispute resolution, it was noted that the bargaining council has a screening process where all new referral forms are screened to determine if the disputes are properly referred. It was then found that from the total of referral forms of disputes received by the bargaining council for dispute resolution, there are those that are not properly referred. In this regard **MD** observed:

"Cases that we screen, they range from 200 to 'let's say 400 in a month, these are cases that we receive, referrals. But from those you might find that others are not properly referred."

The findings revealed that the referral form is not correctly referred when the contact details are not there, the proof of service of the referral to the employer is not there, no citation of the employer party, the nature of the dispute is not ticked, or more than one nature of disputes is ticked and the referral form is not signed. It was found that some employees do not know how to complete a referral form. As a result, all cases that are found to be not properly referred get delayed in their resolution. It becomes the responsibility of the bargaining council to revert to applicants and inform them of the errors in their referral forms as matters cannot be set down for hearings if not properly referred. This was found to be impacting the speedily resolution of the disputes and causing delays.

The finding is in line with the previous study of Bhorat, Pauw and Mncube (2009), who posited that if the referral is lacking any information, the applicant is asked to provide the necessary information, which causes delays. In their study, Van Eck and Kuhn (2019) found that there is no jurisdiction when the referral is not signed and that a copy of the referral document has to be given to the employer party and in support of this MJ remarked:

"In an instance where the matters are referred to the wrong bargaining council like the matters be referred to us and are supposed to go maybe to a different bargaining council. Efficiency is affected in a negative way cause this delays the process meaning that we have to redirect the applicant to the correct bargaining council so that they can try and resolve the matter in that bargaining council. So in terms of like processes there is some sort of slow down so there is definitely an affect and is a negative affect because matters are not set down maybe as or when they were supposed to be set down."

Improper referrals of disputes resulted from a lack of skills by the applicants and union representatives. Participants suggested that there should be training and educational sessions that the bargaining council should conduct to train the union representatives on how to refer disputes in the bargaining council and other processes or procedures of the council.

Discussion

The study aimed to assess the effectiveness and efficiency of the bar-gaining council in resolving public sector labour disputes in South Africa. The research confirmed that the council's processes are governed by the Labour Relations Act (LRA) and its modifications. The LRA provides a complete framework for resolving workplace conflicts, focusing on conciliation and arbitration as the primary dispute resolution mechanisms. Participants highlighted that the council uses several mechanisms, including conciliation, arbitration, disciplinary hearings, and arbitrator inquiries (Section 188A of the LRA).

The study found that improperly completed referral forms, such as missing contact details, lack of proof of service, unsigned forms, and inaccurate party information, delay the resolution process. Many employees lack knowledge of how to complete referral forms, resulting in delays when these forms need correction. This aligns with prior research by Bhorat, Pauw, and Mncube (2009), which noted that incomplete referrals delay proceedings. Additionally, cases are sometimes filed with the wrong body, such as the CCMA instead of the appropriate bargaining council.

The study also revealed that union representatives often lack dispute resolution experience, contributing to delays. Training for union representatives in the dispute resolution process is necessary. Furthermore, the research showed that while the bargaining council is able to set matters for conciliation and arbitration according to established rules, commissioners are hindering the process by failing to submit arbitration awards within the required 14 days and not providing quality or quantifiable awards. This affects the effectiveness and efficiency of dispute resolution, supporting Abwunza's (2019) claim that the quality of the arbitration award is a crucial factor in effective dispute resolution.

Conclusion

Public Bargaining Council in South Africa has been instrumental in shaping public sector, offering a formalized, structured process for collective bargaining, dispute resolution and wage negotiations. However, its effectiveness and efficiency are tempered by the challenges of managing large-scale public sector negotiations within the context of South Africa's fiscal limitations, socio-economic disparities and political dynamics. Thus, the study recommends that the bargaining council should develop training programs for public service employees and union officials to educate them about the council's processes, jurisdiction, and proper dispute referral procedures. Union representatives need better understanding of the correct filing processes to avoid delays caused by improperly referred cases.

Unions should conduct workshops to ensure their members understand the bargaining council's processes, especially regarding the jurisdictional scope of disputes. This will prevent misdirected cases and improve the efficiency of dispute resolution. All parties involved in dispute resolution (employees, unions & employers) must comply with the bargaining council's rules. The effectiveness of the council depends on consistent application of these rules. It is recommended that disputes be filed according to the rules, referral forms be properly completed, and necessary actions like subpoenas, joinders, and condonations follow proper procedures.

The bargaining council should ensure that commissioners issue arbitration awards within the required 14 days, as mandated by the Labour Relations Act. Delays in award submissions contribute to prolonged dispute resolutions. Monitoring of commissioners' adherence to this timeline is essential for improving the council's efficiency and effectiveness.

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