University of Stellenbosch

Graduate School of Business

Industrial Relations

Group Assignment

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from: Group 5

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Declaration

Hereby We, Group 5 of the Fulltime MBA Class, declare that this group work is our own original work and that all sources have been accurately reported and acknowledged, and that this document has not previously in its entirety or in part been submitted at any university in order to obtain an academic qualification.

Bellville, 2002-06-26

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The legal infrastructure of the south African Industrial Relations System and the major functional areas of the Labour Relations Act (66 of 1995)

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1 Introduction

The South African Industrial Relations (IR) system exists within a legal framework that enhances and stabilises the industrial relations processes through interlocking mechanisms. These interlocking mechanisms are created, over the existing common law, by the

- LRA - Labour Relations Act (66 of 1995);
- BCEA - Basic Conditions of Employment Act (75 of 1997); and
- EEA - Employment Equity Act (55 of 1998) cum Skills Development Act (97 of 1998).

The document will discuss the interlocking created by this legal infrastructure, but will also describe the major functional areas of the LRA, with particular emphasis on the dispute resolution machinery. The discussion will employ a prototype of an IR system based on collective bargaining as a framework.

2 The Legal Infrastructure

2.1 Common Law

The common law of South Africa, which has its foundations in Roman-Dutch Law, is the principle legal cornerstone in the relationship between worker (employee) and employer. The Private Contract of Employment between employer and employee, which determines the exchange of labour for remuneration, must therefore be entered into for a worker-employer relationship to exist.

2.2 BCEA

The purpose of the BCEA is inter alia to give effect to and regulate fair labour practices in terms of the Constitution and South Africa's obligations as a member state of the International Labour Organisation (ILO). The act makes provision for exceptions, i.e. exclusion of certain employers and employees from the act or parts thereof, but is generally applicable to the "worker" in the wider sense of the word. A summary of the act must be displayed in places of work where the act is applicable.

The BCEA is an enhancement of the Private Contract of Employment, i.e. it overrides the Private Contract of Employment. It sets several minima and maxima (e.g. working hours, overtime allowed, record keeping and leave periods) to which the employer must comply. It is important to note that the BCEA applies only insofar it makes the basic contract of employment more favourable to the employee; and that it does not replace any legislation that provide a term more favourable to the employee.

2.3 EEA

The EEA aims to promote equal opportunities for potential and existing employees by eliminating unfair discrimination, and to implement affirmative action measures or "positive discrimination" to ensure equitable (racial, gender et al) representation throughout the South African workforce and occupational categories. The EEA is thus legislation that addresses the unfair labour practises that existed in the IR system under Apartheid. The EEA is applicable to all employers who have more than 50 employees. The EEA is policed by the Director-General of the Department of Labour and, through a process determined by the act, can lead to Labour Court proceedings.

The EEA should be read with the Skills Development Act (75 of 1997), which makes provision for the skills development of the workforce. This act, which is also administered by the Department of Labour, has one of its aims to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.

2.4 LRA

The LRA is the "umbrella law" in the South African legal infrastructure for the IR system and governs labour relations. The major purpose of the LRA, in its most simplified form, is to promote orderly collective bargaining. This is done by

- giving effect to section 27 of the Constitution;
- regulating the organisational rights of trade unions;
- promoting and facilitating collective bargaining at the workplace and at sectoral level;
- regulating the right to strike and the recourse to lockout in conformity with the Constitution;
- promoting employee participation in decision-making through the establishment of workplace forums;
- providing simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation,

Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;

- the establishment of the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the LRA;
- providing for a simplified procedure for the registration of trade unions and employers' organisations, and for their regulation to ensure democratic practices and proper financial control; and
- giving effect to the public international law obligations of South Africa, especially regarding the ILO, relating to labour relations.

Figure 2.1 on page 4 gives a graphical presentation of the collective bargaining process within the framework of the LRA. Where a dispute arises between the trade union and the employer, they can proceed to collective bargaining through their bargaining council. The bargaining council is created by statute (the LRA) and the procedures is laid down in the constitution of that bargaining council as determined by the parties constituting the body. Once and if an industrial agreement is reached, such an agreement becomes law - it is ratified by the Minister of Labour and published in the Government Gazette. The industrial agreement overrides the BCEA, but must be an improvement on the BCEA, i.e. be more favourable for employees.

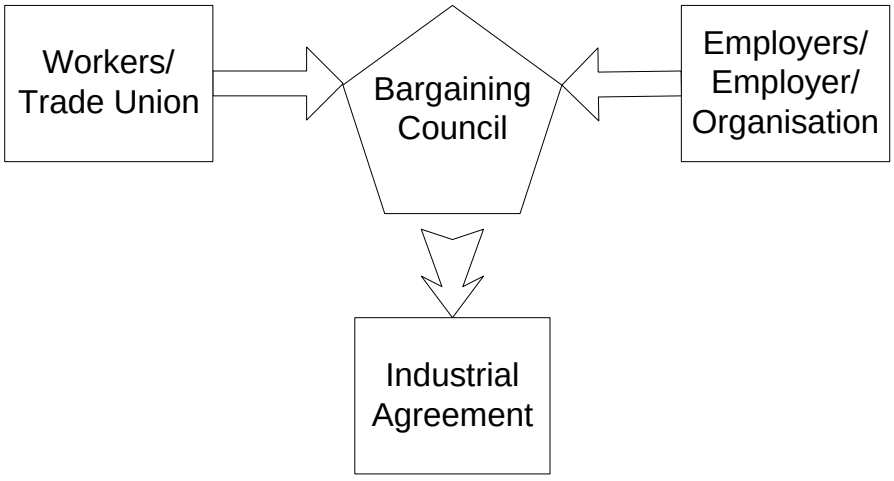

Figure 2.1: Collective bargaining process

2.5 Interlocking Mechanisms of Labour Law

From the discussion thus far, it is clear that the legal infrastructure of the South African IR system has interlocking mechanisms - the laws governing labour practices cannot be viewed as independent entities, but rather form an interdependent matrix. This matrix or legal framework contains the common law private contract of employment, the BCEA, the EEA which is enhanced by the Skills Development Act, and the LRA which forms the "superstructure" for the effective functioning of the IR system.

The BCEA improves the private contract of employment. The EEA guides the employer insofar it influences the employers' choice of employees. The Skills Development Act has a further impact on the worker-employer relationship by making it a legal imperative to develop employees' skills. The LRA creates the mechanisms in which the above interacts, by providing for the institutionalisation of labour relations.

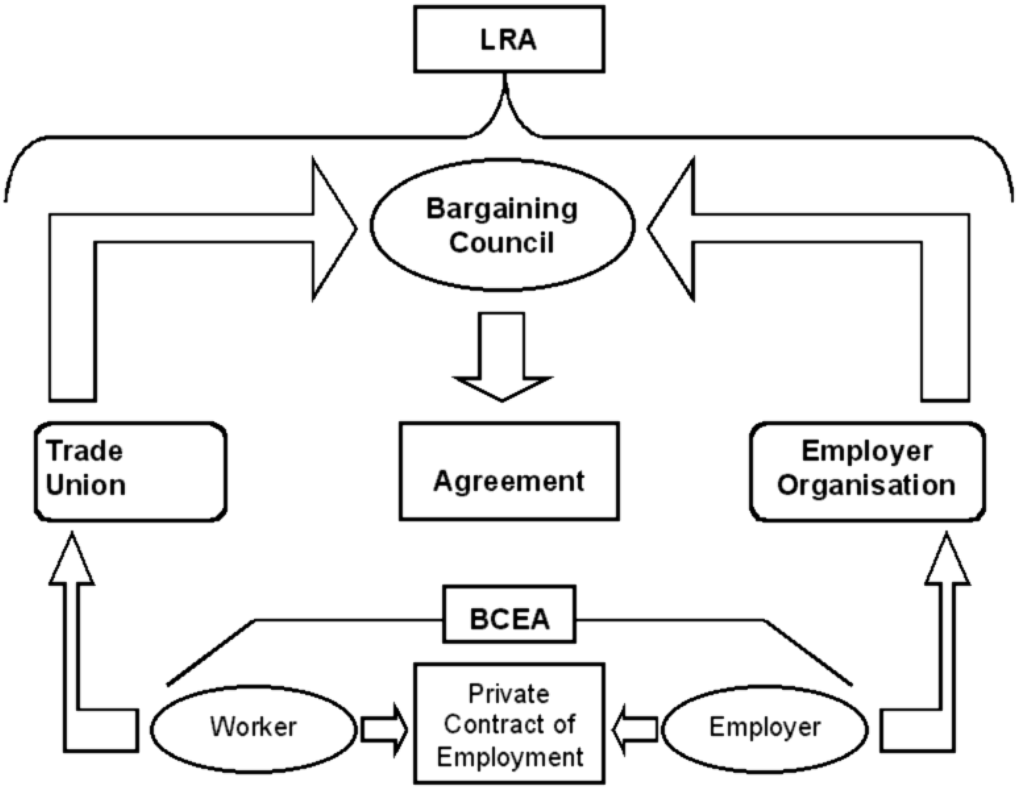

Figure 2.2: Interlocking mechanisms of labour legislation

Figure 2.2 on page 5 provides a schematic representation of the interlocking mechanisms in terms of the collective bargaining process. Note that the contract between individuals (the

employer and employee) is governed by the relevant legislation, but that collective bargaining is done through collective and representative bodies. The industrial agreement reached through collective bargaining in turn influences the individual relationship, as it may only improve on the basic conditions for the employee. The LRA is the overarching legislation that institutionalises the collective bargaining process, allows for the legal enforcement of industrial agreements and provides for the legal apparatus (e.g. the Labour Court) required by other labour legislation.

2.6 Prototype of an IR System

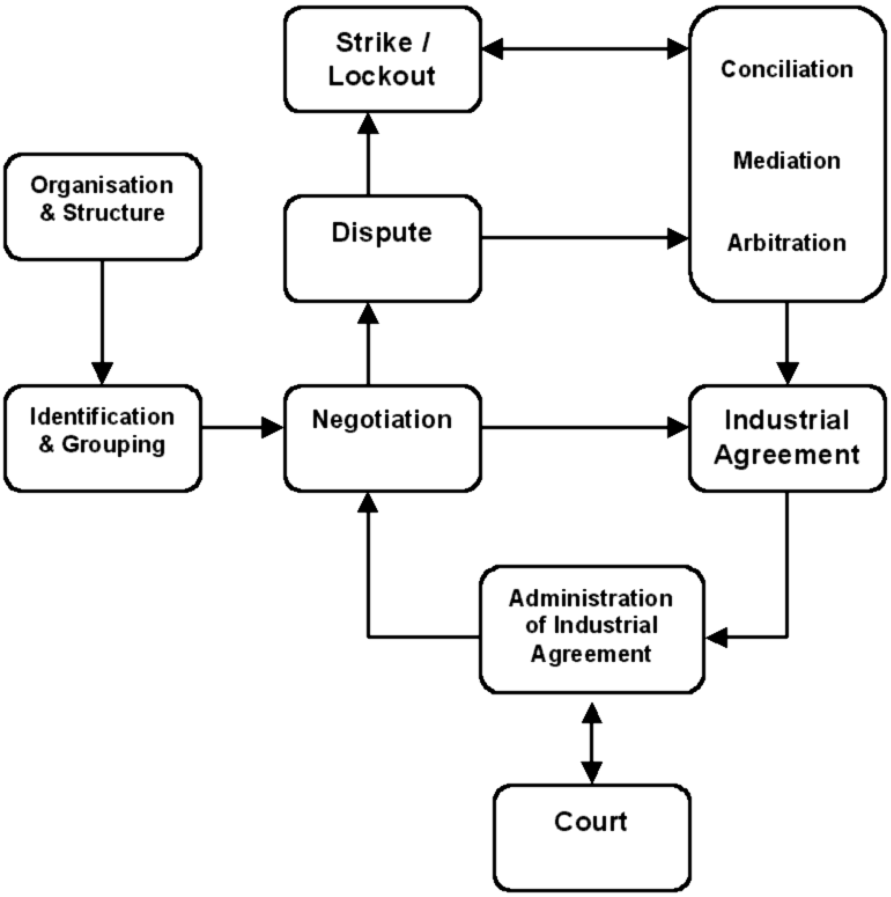

Figure 2.3: Prototype of an IR system

The basic structure of an IR system based on collective bargaining in the free-market and democratic world is the same. Differences in how the IR systems for different societies (countries) operate can be incorporated in this prototype. The prototype IR system has nine

major components, as schematically depicted in Figure 2.3 on page 6.

The prototype provides a framework wherein the functional areas of the South African IR system can be described. It is best to use the LRA as the major term of reference, as it has already been shown that the LRA is the "umbrella law" for labour legislation in South Africa.

The aim of collective bargaining is to reach an industrial agreement - termed a "collective agreement" in South African law.

3 The Major Functional Areas of the LRA

The LRA is a very comprehensive piece of legislation. It contains many bureaucratic requirements and includes matters not relevant to collective bargaining. What follows is not comprehensive, but draws from the LRA the major aspects applicable to collective bargaining and only insofar it addresses the prototype of an IR system.

3.1 Organisation and Structure

Every employee has the right to participate in lawful trade union activities and join a trade union, subject to the trade union's constitution. Union members can elect union officials and representatives, and may be elected or appointed as union officials. The LRA also protects the right of trade union representatives to carry out his or her functions in terms of the legislation or industrial agreements. (Sections 4, 12, 14 and 15)

Similarly, the LRA protects the right of trade unions and employers to form, respectively, trade union federations and employer organisations. Provision is also made for the amalgamation of unions or employer organisations and the change of their names. (Sections 6, 8, 101 and 102)

The act furthermore provide for trade unions and employer organisations to register with the Department of Labour. Registered trade unions and employer organisations may form bargaining councils, and bargaining councils may amalgamate. The state only forms part of a bargaining council as an employer, not as government. In order to function in terms of the law, and apart from the registration of a bargaining council, it must have a constitution that governs the procedures of that bargaining council. The parties belonging to the bargaining council determine the constitution. The bargaining council may change its constitution and its name when they feel it necessary, and must register such changes. (Sections 27, 29, 30, 34 and 96)

Where the requirements for the establishment of a bargaining council are not satisfied, the parties may apply for the establishment of a statutory council in place of a bargaining council. The legislation determines procedures to be followed in the establishment of a statutory council, even if not all parties can agree on the functions and representation of the council. The state plays a significant role in the establishment of a statutory council with the aim of providing the necessary mechanisms for orderly collective bargaining. Statutory councils can be converted into bargaining councils if it meets the legal and bureaucratic requirements. (Sections 39 to 41 and 48)

The LRA makes provision for essential services where the industrial action by people employed in such a service is limited. Essential services are determined by legislation and by an Essential Services Committee. The SA Police Service is an example of an essential service. The National Defence Force, National Intelligence Agency and the SA Secret Service are excluded from the LRA and ruled by separate legislation. (Sections 70 and 71)

Workplace forums, which can be established where an employer has more than 100 employees, may be formed at the request a representative trade union. The LRA provides for procedures to be followed when a collective agreement between the employer and the union cannot be reached for the establishment of a workplace forum. In such cases, a government appointed commissioner can establish a workplace forum a workplace forum. Workplace forums can be union based if a collective agreement to that effect exists between the employer and the union. Workplace forums can be dissolved by ballot. (Sections 80, 82 and 93)

3.2 Identification and Grouping

The identification and grouping process is very important, as it impacts on the level at which collective bargaining take place. As unions would like to conduct collective bargaining at the level where they exercise power, the groupings in the South African IR system is usually at the industry level. The LRA also tends to favour bargaining at industry level.

The LRA clearly protects the rights of employees, trade unions, employers and employer organisations to exercise their rights and responsibilities, and to organise. This includes the protection of persons seeking employment and employers freedom of association. (Sections 4 to 8)

The legislation allows both employees and employers to group themselves in order to form

"partnerships". The effect is that trade unions and employer organisations mostly group themselves according to the industries in which they function. Registered trade unions also have access to the workplace, may recruit members and have meetings on the premises of the employer as long as it is reasonable and not disruptive. (Sections 8, 12 and 15)

It is possible, subject to certain conditions of the LRA, for a representative trade union and an employer or employers' organisation to reach a collective agreement effecting a closed shop agreement. In such a case, the employer or employer organisation will only negotiate with that union regarding labour issues. The closed shop agreement may also determine that the employer only employs members of that specific trade union. A closed shop agreement can be dissolved by the employees and is dissolved if three years expire since the last ratification of the agreement. (Section 26)

An agency shop agreement requires that employees who are not members of a trade union pay an agency fee. The agency fee is paid into a fund that is administered by the trade union, but it may not be used to fund trade union activities - only to the benefit of that employee. (Section 25)

The process of identification and grouping in effect determines the establishment of bargaining councils. Bargaining councils thus generally established at the level of grouping. Bargaining councils for the public sector, i.e. where the state is the employer, are determined by the state and falls under the Public Service Co-ordinating Bargaining Council. (Sections 35 to 37)

Workplace forums fall outside the ambit of bargaining councils and must seek to promote the interest of all employees, not just union members. The employer may only consult a workplace forum if the matter he wishes to consult on does not form part of a collective agreement with a trade union. However, a bargaining council, through a collective agreement, may confer on a workplace forum the right to be consulted on specific issues. (Sections 79 and 84)

If any member of a registered trade union or employers' organisation takes part in proceedings in terms of the LRA, such a trade union or employers' organisation is entitled to also be part of the proceedings. A trade union or employers' organisation can thus act in its own interests, in the interest of its members or on behalf of its members. (Section 200)

3.3 Negotiation

The negotiation module in the prototype of an IR system is a "dummy" module that connects the organic features with the procedural (collective bargaining) features of the system. The law is silent on the aspect of negotiation - it does not prescribe how negotiations should take place.

Nevertheless, it is noteworthy that the LRA makes provision for negotiations outside the collective bargaining process via workplace forum meetings. The workplace forum allows for a consultative process and joint-decision-making. Collective agreements can thus flow from workplace forums. However, collective bargaining mostly takes place at industry (or sectoral) level. (Sections 79 and 86)

3.4 Industrial Agreement

The industrial agreement (collective agreement) is the product or outcome of collective bargaining, normally done in the bargaining council. (Collective agreements can be reached at plant level too.) They address issues that are of mutual interest to the parties involved, e.g. conditions of employment.

The collective agreement carries more legal weight than a private contract of employment, as depicted in figure 2.2 on page 5. In fact, the LRA specifically states that a collective agreement that is binding on both parties to a private contract of employment can change the contract of employment. When an industrial sector is unionised, it is therefore likely that the conditions of employment for workers in that sector are determined by a collective agreement. (Sections 23 and 199)

A collective agreement is legally binding on the parties to that agreement, if the trade union that is party to the agreement is registered with the Department of Labour. Employers, on the other hand, do not have to be registered to enter into a legally binding collective agreement. In a unionised environment, where the majority of employees are members of the union, a collective agreement is also binding on other employees. The collective agreement can also be binding on non-union employees if the collective agreement specifically includes them. (Sections 23 and 31)

The Minister of Labour can extend a collective agreement, where applicable and on request of the bargaining council, to parties who are not part of the bargaining council. This can only

be done if checking mechanisms provided for in the LRA, with the objective of ensuring fairness, are satisfied. (Section 32)

3.5 Administration of Industrial Agreement

Collective agreements remain in force for a period determined by its bargaining council, which can also be indefinite. Where a collective agreement is indefinite, one of the parties may give reasonable notice that they wish to dissolve the agreement. Most collective agreements self-terminate after one year. (Section 23)

As explained earlier, a collective agreement has the same weight as legislation. The Minister of Labour will ratify the agreement and it will be published in the Government Gazette. The bargaining council responsible for a collective agreement also "police" that agreement. Where parties bound to the agreement do not adhere to its stipulations, legal action can be launched in the Labour Court, as a breach in the collective agreement will constitute a breach of rights. (Section 28)

3.6 Labour Court

The Labour Court is at the same level as a provincial Supreme Court, but has jurisdiction throughout South Africa. The Labour Court has exclusive jurisdiction in terms of the LRA, but it does not have jurisdiction in criminal matters or matters of contract. The Labour Court remains subject to the Constitution and the Labour Appeal Court. The Labour Court also has the jurisdiction to refuse a matter if it is of the opinion that no effort has been made to solve a dispute through conciliation. Where the LRA requires a dispute to be resolved through arbitration, the Labour Court has no jurisdiction. (Sections 151 and 157)

The major aspects can be summarised as follows:

3.6.1 Freedom of Association

- Disputes about the exercise of rights of freedom of association. (Section 7)
- Disputes about the freedom of association and victimisation. (Section 9)

3.6.2 Bargaining Councils

- Interpretation and application of bargaining council determinations. (Section 63)
- Admission and cancellation of bargaining councils. (Sections 56 and 59 to 61)

3.6.3 Industrial Action

- Breaches in picketing rules and legality of strikes. (Sections 66, 67 and 69)
- Interdicts and orders with regard to socio-economic protest action. (Section 77)

3.6.4 Trade Unions and Employer Organisations

- Non-compliance with trade union constitution. (Section 158)
- Winding-up of trade unions and employer organisations when they do not comply with the LRA, they go insolvent or their registration is cancelled. (Sections 103 to 105)

3.6.5 Dismissals

- Unfair dismissals and dismissals resulting from operational requirements, strikes or closed shop agreements. (Section 191)
- Referrals from the Commission for Conciliation, Mediation and Arbitration (CCMA). (Section 191)
- Unfair labour practice disputes that involves alleged discrimination. (Schedule 7 item 2)

3.6.6 Review of CCMA and Private Arbitration

- In cases where there was procedural "defects" in arbitration, the Labour Court may review the case. (Section 145)
- The Labour Court may not resolve a yet unresolved dispute if the LRA determines that the route of arbitration must be followed. (Section 157)

3.6.7 Powers of the Labour Court

- The Labour Court may make "any appropriate order" which include interdicts, compensation and damages, and orders of specific performance. (Section 158)
- It may order compliance with aspects of the act, e.g. order a union to have a ballot to test the support for a closed shop agreement. (Sections 26 and 158)
- It can make an arbitration award or settlement an order of the court (i.e. where there has been a dispute of rights), but the court may not make a collective agreement an order of the court. (Section 158)
- The Labour Court may request the CCMA to investigate and file a report on a labour relations matter. (Sections 66 and 158)
- It may issue search warrants related to a labour case. (Section 142)
- It may determine disputes over the non-compliance with the constitution of a union. (Section 158)
- It may make orders of cost for court proceedings in terms of the LRA. (Section 162)

3.7 Disputes

The LRA makes provision for a set of institutions for resolving disputes. In accordance with international best practice, it centres on the CCMA. The system is flexible in that it can adapt to the nature of the dispute. The LRA also lays down detailed guidelines that must be followed before a dispute may proceed to arbitration, industrial action or adjudication by the Labour Court. These measures aim to ensure that a genuine attempt at conciliation has been made. (Sections 9, 158 and 159)

The South African IR system has a legal framework in which employer organisations, employers, trade unions and employees is able to regulate their own relations and resolve their disputes - the state does not carry the primary responsibility in resolving disputes. The measures in place also aim to reduce strike action, as it does not protect industrial action over issues that may be referred to arbitration or adjudication. Disputes of right (as opposed to common law or delict) arising from the LRA can thus be determined through arbitration

or adjudication by the Labour Court, the CCMA, or other accredited councils or agencies. (Sections 23, 24 and 147)

Flowing from the above, it is required by law that all collective agreements must contain procedures for conciliation and arbitration regarding disputes of their interpretation. The CCMA will only step in where parties fail to do so, or where they frustrate the implementation thereof. Employers and trade union are free to enter collective agreements that determine their own preferred arrangement for the resolution of disputes. (Sections 24 and 147)

In addition to the bargaining councils and statutory councils mentioned earlier, the LRA created the following institutions to form part of the dispute resolution machinery:

- CCMA - The CCMA, although largely funded by the state, acts independently. It has many dispute resolution functions, including individual dismissals, collective disputes and the already mentioned research for the Labour Court. (Sections 112, 113 and 115)
- Accredited Institutions - The LRA provides for dispute resolution outside the CCMA, namely CCMA accredited bargaining councils, statutory councils and private dispute resolution agencies. (Sections 127 to 132)
- National Economic Development and Labour Council (NEDLAC) - NEDLAC is a tripartite body with a wide range of functions, including functions related to the dispute resolution system. These functions are mostly procedural in nature, but influence the workings of the dispute resolution system (i.e. the Labour Court, the Labour Appeal Court, the CCMA and the Essential Services Committee). (Sections 38, 70, 138, 152, 153 and 169)
- Essential Services Committee (ESC) - The Minister of Labour must establish a standing ESC to determine disputes regarding essential and maintenance services. (Section 70)
- Public Service Dispute Resolution Committee - This committee must be established to resolve disputes between the Public Service Co-ordinating Bargaining Council and any other bargaining council for state employees
- Labour Court - see section 3.6 above.
- Labour Appeal Court - Subordinate to the Constitutional Court only, has the exclusive jurisdiction to hear appeals from the Labour Court. (Section 173)

3.8 Strikes and Lock-outs

Strikes and lock-outs under the latest LRA is in line with the Constitution and the relevant standards of the ILO. Strikes and lockouts, in terms of the LRA, are instruments of last resort. It must be preceded by conciliation for which, as we have seen above, a proactive dispute resolution system is in place. Furthermore, the LRA provides remedies on "rights" issues in the form of arbitration or adjudication, and strikes on such issues are unprotected (not permissible). An unprotected strike is not a criminal offence, but renders the employee liable to discipline (including dismissal) and exposes the employee and trade union to civil action. The LRA also provides the right to strike, accompanied by protection against dismissal and victimisation - the protected strike. (Sections 64, 65 and 67)

3.8.1 Definitions

The LRA defines a strike as "the partial or complete concerted effort to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purposes of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to work in this definition includes overtime work, whether it is voluntary or compulsory". (Section 213) A lock-out is defined as "the exclusion by an employer of employees from the employer's workplace, for the purpose of compelling the employees to accept a demand in respect of any matter of mutual interest between employer and employee, whether or not the employer breaches those employees' contracts of employment in the course of or for the purpose of that exclusion". (Section 213) An important difference between a strike and a lock-out is the difference in legal standing - workers have the right to strike, whereas employers have the lock-out as a recourse. As the lock-out is not a right, the employer is not protected in such circumstances from discrimination or prejudice by the employees - e.g. trade unions can thus include product boycotts and similar actions in there industrial action.

3.8.2 Requirements for Protected Industrial Action

Chapter IV of the LRA sets several procedures that must be followed before workers or employer(s) before industrial action qualify as a protected strike or lock-out. In main, a dispute must first be referred to a bargaining council with jurisdiction or the CCMA. The bargaining

council or CCMA must certify the dispute unresolved and then at least 48 hours notice of the impeding industrial action must be given to the employer, employer organisation, bargaining council or trade union depending on the circumstance and nature of the dispute. These statutory requirements are not applicable in the following scenarios: (Section 64)

- The parties are members of a bargaining council and the dispute has been dealt with according to the constitution of that bargaining council.
- The strike or lock-out conforms to the procedures of a collective agreement.
- The employees strike in response to an unprotected lock-out.
- The employer locks out the employees in response to an unprotected strike.
- The employer fails to comply with a status quo notice issued by an employer or trade union.

Collective agreements may include the agreement not to strike or lock-out, which in effect means that a trade union may waive its right to strike. Similarly, industrial action may not be effected if a collective agreement determines that the issue of dispute must be referred for arbitration. Where an arbitration award has been made on a dispute, no industrial action may be conducted regarding the dispute. Industrial action may also not endanger health, life or safety, and persons in essential services may not take industrial action. (Section 65)

3.8.3 Consequences of Unprotected Industrial Action

As mentioned above, non-compliance with the requirements for protected strikes and lockouts is not a criminal offence. However, it does hold consequences in terms of civil sanction for a party that takes unprotected industrial action:

- The Labour Court may provide an interdict against the non-compliant party. (Section 68)
- The Labour Court can order "just and equitable" compensation to the party that suffers a loss because of an unprotected strike or lock-out. (Section 68)
- It may constitute a fair reason for dismissal. (Schedule 8)

3.9 Conciliation, Mediation and Arbitration

The dispute resolution machinery to be used in the case of a dispute is often determined by a collective agreement reached by a bargaining council. Conciliation, mediation and arbitration in the South African IR system can triggered by the procedures provided for in a collective agreement of a bargaining council, by referring a dispute to the CCMA, by appointing an arbiter, or by employing a private party to resolve the dispute. The Labour Court may review arbitration awards. (Sections 23, 133, 134 and 145)

3.9.1 Dispute Resolution by Bargaining Councils

Bargaining Councils may only be used for conciliation if they are accredited to the CCMA. The LRA encourages parties to a dispute to resolve (or attempt to resolve) the dispute in this manner before referring the dispute to another institution. (There are exceptions, e.g. where the collective agreement does not provide for dispute resolution, where disputes must be referred to the CCMA exclusively.) A bargaining council rarely act as an arbiter - in cases of "rights issues" the dispute is normally referred to the CCMA for arbitration. (Sections 23 and 127 to 132)

Where a collective agreement makes provision for a method of dispute resolution, the parties to the collective agreement are bound to follow that method. The LRA also provides for the confidentiality of the conciliation process. (Sections 23 and 126)

3.9.2 Referral to the CCMA

If a dispute is referred to the CCMA, it will appoint a commissioner to attempt to resolve the dispute by conciliation. The idea is that the CCMA assist the parties in dispute to help themselves - the commissioner merely acts as a "peace-keeper". If the dispute is not resolved within a certain time period, normally 30 days, industrial action may take place or the matter may proceed to another method dispute resolution. (Sections 134 and 135)

Conciliation may also take place through mediation. Mediation is a voluntary process in which the parties in dispute are helped by a neutral person to reach a settlement. In essence, a mediator only facilitates the conciliation process - the mediator has no power to advise, recommend, decide or negotiate on behalf of any party. (Section 135)

The CCMA may appoint a commissioner as an arbiter if provided for in the LRA, or the

dispute remains unresolved, or if any party to the dispute has requested that it be resolved through arbitration. Although arbitration is not litigation, parties may be represented during an arbitration hearing. The independent arbiter gives an arbitration award after hearing the arguments of the parties involved in the dispute. CCMA arbitration is regulated by the LRA, which means that referral to the CCMA for arbitration is not necessarily a consensual decision between parties in dispute. The arbitration award is nevertheless binding on the parties involved. An arbitration award, given that it was done fairly and quickly and dealt with the substantial merits of the case, is final and binding. The CCMA will file a copy of the award with the Labour Court and the award can be made an order of the Labour Court (i.e. executed as a court judgement). (Sections 23, 136, 138, 143 and 158)

3.9.3 Private Dispute Resolution

Parties to a dispute must employ private dispute resolution when they have a collective agreement to that effect or may employ such if it is by consensual agreement. Private dispute resolution is recognised by but is not governed by the LRA. Where use is made of private (non-statutory) arbitration, the arbitration is binding under the Arbitration Act (42 of 1965) and can be made a court order of the Supreme Court. The LRA provides for the Labour Court to also fulfil this role. The Labour Court may also review private arbitration (under the Arbitration Act) if the dispute could have been referred for arbitration under the LRA. (Sections 127, 147, 157 and 158)

3.10 Back to the Industrial Agreement

The process of conciliation, mediation and arbitration results in an industrial agreement, whether a collective agreement or on arbitration award. This industrial agreement must be administered as described in section 3.5 of this document. However, industrial agreements are again subject to future negotiations. The IR system is thus dynamic and the LRA does provide for this fact - industrial agreement can be renegotiated as determined in the agreement or arbitration award.