29 Oct 2015

NTEU NATIONAL TERTIARY EDUCATION UNION

Retirement age issue @ NMMU ~ Craig Llyal-Watson was tasked with preparing a report for Management on the retirement age in the higher education sector. He would have presented the report to MANCO on 28 October. We are expecting to engage with Management in this regard shortly. This process will guide the institutional retirement age debate that we believe needs to be held.

Many of our members are studying for **year-end exams** at present. Avoid crippling exam anxiety by managing your time wisely. Do not leave it for the last week before the exam. Eat enough healthy (not junk) food. Get fresh air. Take a walk around the block every three hours. Drink enough water. Think positive thoughts. All the best to you!

Take great care in cultivating positive thoughts this week.

UNIVERSITY FUNDING ~ University funding and study fee increases resulted in student protests across the country. A Task team will be established to make recommendations on funding for students. Through FEDUSA, NTEU NATIONAL is trying to get a seat on the task team.

Thought is the blossom; language the bud; action the fruit behind it.
Ralph Waldo Emerson.

The Common Law Contract of Employment: Part 6 ~

Employers may not change conditions of service (COS) or the contract of employment (COE) unilaterally. It means that employers are obliged to consult with employees or their representative trade union before they make any changes to COS or the COE. Consult means the employer provides the trade union(s) with information regarding changes and the reasons for the changes. Judge Nicholson, in the labour court, is on record saying that "consultation is a very important process and necessitates that the consulting parties must engage in a joint problem-solving exercise in order to try and reach consensus. *Bone fides* is crucial and shadow-boxing, subterfuges and masquerades impede matters. The employer must provide the other party the opportunity to make representations on any relevant issue ... and the employer must seriously consider and evaluate the representations."

Therefore, when employers contemplate changing COS they need to, in the consultative process, provide convincing reasons as to why changes are to be made. They have to provide a sound economic (financial) rationale motivating the changes and how the organisation will benefit from them, be it cost saving, improved productivity or whatever.

Returning to what Judge Nicholson had to say, it must be noted that the object of consultation is "to try to reach consensus". It does not mean that consensus must be reached. Therefore, if consensus is not reached, the employer may go ahead and implement the changes, because the obligation to consult has been met. There is a risk for the employer in implementing changes to COS when consensus has not been reached with the trade union(s) after consultation, as it will have a negative impact on the members of the trade union who will think the employer does not care for them. However, many employers do exactly that.

Following the implementation of changes to COS after consultation with unions and the employees are unhappy with the changes, the unions enjoy the right to challenge the employer by declaring a dispute, following the dispute procedure set out in the Labour Relations Act (LRA), which could end up in the Labour Court.

Turning now to changes in the contract of employment, unilateral changes to a COE that are less favourable, is prohibited and any employer that commits such an act can be challenged in terms of relevant labour legislation. This does not only apply to people employed in a permanent capacity. The LRA protects employees on a fixed term contract that has been renewed a number of times, and if the employer does not renew the contract on terms equal to or similar to previous contracts, the employer is deemed to have dismissed the employee unfairly.

A major onus on the part of both employers and labour is to be reasonable at all times. To change the COE unilaterally, even if they are fixed term contract employees, and make them considerably less favourable is unreasonable and needs to be challenged in terms of the provisions of the LRA. Decent, value driven employers do not behave like that.

There are organisations that believe that consultation amounts to informing employees (and unions) of changes to COE before implementing them. That is not correct – proper consultation requires a more rigorous process than merely informing employees and unions of changes. The reasons must be well motivated and the inputs from labour must be taken seriously before proper consultation can be considered to have taken place.