AN INVESTIGATION INTO THE RIGHT OF ESSENTIAL PUBLIC SERVANTS TO STRIKE

BY

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ABSTRACT

The right to strike is a fundamental right that is promulgated the South African Constitution and as laid down by the Committee on Freedom of Association. Excluded from the right to strike are workers who are employed within the category of essential services. Large parts of the public sector are designated as such and much of the violence surrounding strikes in recent years has arisen in this sector and has involved these services, leading to widespread concern about the efficacy of legal enforcement.

To date, more than 14 years after the LRA came into effect; no minimum service agreement has been ratified by the ESC. Hence, this study intends to investigate the whether Essential services employees have the right to strike or not. The overall reason for the study is to make recommendations in order to establish an agreement to minimize Essential Public Servants from going on strike to ensure continuity in quality service delivery by Public Servants to the citizenry of the country in the event of there being a Public Service strike.

For the purposes of this study, the qualitative research methodology was used and face to face interviews were used to gather the data. The results of the study are drawn from population of 16 respondents who are key respondents and members of the PSCBC and also high level representatives from the two departments which offer essential services in South Africa.

From data collected, it was evident that essential public servants have the right to strike provided certain conditions are met. One of the glaring conditions is the need for the conclusion of a Minimum Service Agreement to be in place. This agreement will spell out requirements for both an employee and the employer in the event of an essential public service strike. The study concludes with various recommendations that made towards the achievement of a Minimum Service Agreement (MSA). In some cases, minimum services must be provided to replace an essential service. Generally minimum services refer to those services required to protect life. For example, if medical staff went on strike, minimum services will be required to tend to medical emergencies. In the absence of a minimum service agreement ratified by the Essential Services Committee (ESC), the Labour Relations Act No 66 of 1995, as
amended ("the LRA") prohibits workers employed in an essential service from striking.
DECLARATION OF ORIGINAL WORK

I, Oomang Parag, declare that this research report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the Masters of Business Administration degree at Regenesys Business School, Sandton, South Africa. It has not been submitted before for any degree or examination at any other university or educational institution.

_______________________  _____________________
NAME                      DATE
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- My wife Ashicka, thank you; for inspiring me when I gave up (which was so often), for your patience and understanding during the time that I dedicated towards my studies.
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- My fountain of inspiration; my revered late father Schoolmaster Bharath Parag, a true servant of the underprivileged and physically challenged who perished way too early in life, thank you for instilling Ubuntu in us, we are nothing without it.
- Man is made by his belief. As he believes, so he is… Srimad Bhagvad Gita.
# TABLE OF CONTENTS

ABSTRACT .................................................................................................................. 1
DECLARATION OF ORIGINAL WORK ........................................................................ 4
ACKNOWLEDGEMENTS .............................................................................................. 5
LIST OF TABLES ......................................................................................................... 10
LIST OF FIGURES ...................................................................................................... 11
ACRONYMS ................................................................................................................. 11
CHAPTER 1 .................................................................................................................. 12
  1.1. Introduction ......................................................................................................... 12
  1.2. Background to the study: .................................................................................. 12
  1.3. Background to the problem .............................................................................. 15
  1.4. Problem statement .......................................................................................... 17
  1.5. Motivation/ rationale for the study ................................................................... 18
  1.6. Significance of the study .................................................................................. 20
  1.7. Aims of the study ............................................................................................ 20
  1.8. Objectives of the study .................................................................................... 20
  1.9. Research questions .......................................................................................... 20
  1.10. Outline of the remainder of the study .............................................................. 21
  1.11. Conclusion ...................................................................................................... 22
CHAPTER 2 .................................................................................................................. 23
  LITERATURE REVIEW ............................................................................................. 23
  2.1. Introduction ....................................................................................................... 23
  2.2. Definition of terms ........................................................................................... 24
      2.2.1. Public Servants .......................................................................................... 24
      2.2.2. Essential Service ...................................................................................... 26
      2.2.3. The right to strike ..................................................................................... 29
  2.3. South African Legislative Frameworks ................................................................ 31
      2.3.1. The Constitution of the Republic of South Africa Act No. 108 OF 1996 ........ 32
      2.3.2. Public Service Act No. 104 of 1994 ......................................................... 33
      2.3.3. Labour Relations Act 66 Of 1995 .............................................................. 33
      2.3.4. Minimum Service Agreement- PSCBC: Resolution 01 of 2007 ................ 34
      2.3.5. Public Service Co-ordinating Bargaining Council’s Constitution – 1997 ..... 36
  2.4. International Labour Relations Bodies ............................................................... 37
5.1. Introduction ............................................................................................................. 80
5.2. Demographic data ................................................................................................. 80
5.3. Analysis of data collected from the face to face interviews .............................. 80
  5.3.1. Question 4: The Constitution gives all South Africans the right to strike; do you have the right to strike (Y/N)? .......................................................... 81
  5.3.2 Question 5: Substantiate you answer .............................................................. 81
  5.3.3. Question 6: In your opinion do you think essential service workers have the right to strike? ..................................................................................................... 82
  5.3.4. Question 7: Substantiate your answer ........................................................... 82
  5.3.5. Question 8: Under what conditions may essential services embark on strike action? ........................................................................................................... 83
  5.3.6. Question 9: Are you aware of any minimum services agreement (MSA) that permits essential public servants to embark on strike action (Y/N)? .......... 84
  5.3.7. Question 10: Substantiate the above if yes .................................................... 84
  5.3.8: Question 11: What are the repercussions for the employer of not having this agreement (MSA) in place? ............................................................................. 84
  5.3.9: Question 12: What are the repercussions for the employees of not having this agreement (MSA) in place? ........................................................................... 85
  5.3.10: Question 13: What is the impact to the beneficiaries of the services rendered if there is a strike? ........................................................... 86
  5.3.11. Question 14: What is the impact to the employer when services are not rendered? ........................................................................................................... 86
  5.3.12. Question 15: As essential services personnel what is the impact to you personally if there is a strike? ........................................................... 87
  5.3.13. Question 16: What recommendations can you make towards achieving a Minimum Services Agreement (MSA)? .................................................... 87
5.4. Conclusion ............................................................................................................ 88

CHAPTER 6 ..................................................................................................................... 90
CONCLUSIONS AND RECOMMENDATIONS ................................................................. 90
6.1. Introduction ............................................................................................................. 90
6.2. Summary of Research Objectives ......................................................................... 90
6.3. Conclusions and recommendations ..................................................................... 90
  6.3.1.1 The Right of essential public service workers to strike ......................... 90
  6.3.2. The conditions under which essential public servants may strike .......... 91
  6.3.3. The impact of essential employees strike on essential services .............. 91
  6.3.4. Recommendations made towards the achievement of a Minimum Service Agreement (MSA): ................................................................. 91
6.4. Suggestions for further research ......................................................................... 92
6.5. Conclusion............................................................................................................ 93

BIBLIOGRAPHY ........................................................................................................... 94
<table>
<thead>
<tr>
<th>Table</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Category breakdown of the number of respondents</td>
<td>58</td>
</tr>
<tr>
<td>4.2</td>
<td>Indicates a breakdown of the number of respondents-employer/trade union split</td>
<td>59</td>
</tr>
<tr>
<td>4.3</td>
<td>Respondents’ organisation</td>
<td>60-61</td>
</tr>
<tr>
<td>4.4</td>
<td>Respondents’ organizational position</td>
<td>61</td>
</tr>
<tr>
<td>4.5</td>
<td>Illustrating a summary per position</td>
<td>62</td>
</tr>
<tr>
<td>4.6</td>
<td>Illustrating a summary per Council member/Non-member</td>
<td>63</td>
</tr>
<tr>
<td>4.7</td>
<td>Respondents’ right to strike</td>
<td>64</td>
</tr>
<tr>
<td>4.8</td>
<td>Respondents’ substantiation to the right to strike</td>
<td>64-65</td>
</tr>
<tr>
<td>4.9</td>
<td>Responses to whether essential public servants have the right to strike or not</td>
<td>66</td>
</tr>
<tr>
<td>4.10</td>
<td>Substantiation as to whether essential public servants have the right to strike or not</td>
<td>67</td>
</tr>
<tr>
<td>4.11</td>
<td>Responses on conditions under which essential public servants may embark on strike action</td>
<td>68-69</td>
</tr>
<tr>
<td>4.12</td>
<td>Responses regarding the repercussions of an employer not having a MSA</td>
<td>70-71</td>
</tr>
<tr>
<td>4.13</td>
<td>Responses regarding the repercussions on employees for not having a MSA</td>
<td>72-73</td>
</tr>
<tr>
<td>4.14</td>
<td>Responses on the impact to the beneficiaries of service rendered in the event of a strike</td>
<td>73-74</td>
</tr>
<tr>
<td>4.15</td>
<td>Illustrating the impact to the employer when services are not rendered</td>
<td>74-75</td>
</tr>
<tr>
<td>4.16</td>
<td>Illustrating the repercussions as an essential public servant, the personal impact</td>
<td>76-77</td>
</tr>
<tr>
<td>4.17</td>
<td>Recommendations by candidates on attaining a MSA</td>
<td>77-79</td>
</tr>
</tbody>
</table>
# LIST OF FIGURES

<table>
<thead>
<tr>
<th>Figure</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Illustrates Breakdown of respondents per organisation</td>
<td>58</td>
</tr>
<tr>
<td>2</td>
<td>Illustrates Breakdown of State/Trade Union Employees</td>
<td>59</td>
</tr>
<tr>
<td>3</td>
<td>Illustrates a summary per position</td>
<td>62</td>
</tr>
<tr>
<td>4</td>
<td>Illustrates a summary per Council Member/Non-member</td>
<td>63</td>
</tr>
<tr>
<td>5</td>
<td>Illustrates a summary of the right to strike</td>
<td>64</td>
</tr>
<tr>
<td>6</td>
<td>Illustrates a summary on a vote on whether essential service workers have the right to strike</td>
<td>66</td>
</tr>
</tbody>
</table>

# ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCMA</td>
<td>Commission for Conciliation, Mediation and Arbitration</td>
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<td>CFA</td>
<td>Committee on the Freedom of Association</td>
</tr>
<tr>
<td>DENOSA</td>
<td>Democratic Nursing Organisation of South Africa</td>
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<tr>
<td>DOH</td>
<td>Department of Health</td>
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<tr>
<td>ESC</td>
<td>Essential Service Committee</td>
</tr>
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<td>HCW</td>
<td>Health Care Workers</td>
</tr>
<tr>
<td>HOSPERSA</td>
<td>Health and Other Services Personnel Trade Union of South Africa</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>LRA</td>
<td>Labour Relations Act</td>
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<td>MSA</td>
<td>Minimum Service Agreement</td>
</tr>
<tr>
<td>NEHAWU</td>
<td>National Education, Health and Allied Workers Union</td>
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<tr>
<td>POPCRU</td>
<td>Police and Prisons Civil Rights Union</td>
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<td>PSA</td>
<td>Public Servants Association</td>
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<td>PSCBC</td>
<td>Public Service Co-ordinating Bargaining Council</td>
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<tr>
<td>SAPS</td>
<td>South African Police Service</td>
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<tr>
<td>SAPU</td>
<td>South African police Union</td>
</tr>
</tbody>
</table>
CHAPTER 1

INTRODUCTION

1.1. Introduction

Dr. Nelson Mandela was clear in his speech when he was released in 1994, he addressed the people as follows:

“Let there be justice for all, Let there be peace for all, Let there be work, bread, water and salt for all, Let each know that for each the body, the mind and the soul have been freed to fulfil themselves and never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world. Let freedom reign. The sun shall never set on so glorious a human achievement. God bless Africa.” (Mandela, 1994).

South Africa celebrates 20 year of democracy this year (2014), there has been huge transformation in the labour relations arena since the dawn of democracy and the breaking of the shackles of apartheid. The “Right to Strike” is a fundamental right given to all citizens of our country according to section 23 of the Constitution of the Republic of South Africa.

This study focuses on this Right to Strike within the Essential Public Service who are denied the “right to strike” in terms of Section 65 (d)(ii) of the Labour Relations Act of 66 of 1995. The objectives of the study are to investigate if the Essential Services category of employees has the right to strike? The study will also assess the conditions required for these employees to go on strike and evaluate the effects of essential employees strike on essential services.

1.2. Background to the study:

From its very earliest days, during its second meeting, in 1952, the Committee on Freedom of Association declared strike action to be a right and laid down the basic principle underlying this right, from which all others to some extent derive, and which recognizes the right to strike to be one of the principal means by which workers and their associations may legitimately promote and defend their economic and social interests (International Labour Organisation (ILO), 1996). Over the years, in line with this principle, the Committee on Freedom of Association has recognized that strike
action is a right and not simply a social act (Gernigon, 1998). In the same spirit, the South African Constitution which was promulgated in 1996, section 23 (2)(c) points out that,

“23. Labour relations.--(l) everyone has the right to fair labour practices.

(2) Every worker has the right-

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike”.

Form the Constitutional point of view, from the above quotation; it is clear that all employees regardless of their category of work have a right to strike. In the South African Public Service, there are various categories of employees which include Essential Services employees.

In addition, Section 213 of the Labour Relations Act 66 of 1995 (LRA) defines essential service as follows:

“Essential service” means (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population; (b) the Parliamentary service; (c) the South African Police Services.”

The scope of the study will be confined to employees of the Public Service employed in terms of the Public Service Act 103 of 1994. According to Section 8 of the Public Service Act of 1994, the public service shall consist of persons who

(1) The public service shall consist of persons who—

(a) hold posts on the fixed establishment—

(i) classified in the A division and the B division;

(ii) in the services;

(iii) in the Agency or the Service; and

(iv) in state educational institutions;
(b) (i) having ceased to hold posts on the fixed establishment contemplated in paragraph (a), and not having retired or having been discharged, are employed additional to the fixed establishment or who are deemed to continue to hold posts under the circumstances contemplated in subsection 3 (c);

(ii) are appointed permanently additional to the fixed establishment;

(c) (i) hold posts on the fixed establishment other than posts referred to in paragraph (a);

(ii) are employed temporarily or under a special contract in a department, whether in a full-time or part-time capacity, additional to the fixed establishment or in vacant posts on the fixed establishment (South Africa, 1994),

Public institutions are established for the sole purpose of addressing the needs of communities without any expectation to make a profit. Funds for managing and operationalising public policies in these institutions come directly or indirectly from individuals in the form of taxes. It is for this reason that employees in the public sector are known as civil servants (Penceliah, 2014). These employees should selflessly serve the public are be committed to the public good. They should always maintain a moral high ground. Public sector employees are appointed in terms of legislation made by legislative institutions and remuneration packages are subject to discussions by cabinet.

Section 195 of the Constitution of the Republic of South Africa (1996) outlines the basic values and principles governing public administration as follows:

195. Basic values and principles governing public administration.—(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

a) A high standard of professional ethics must be promoted and maintained.
b) Efficient, economic and effective use of resources must be promoted.
c) Public administration must be development-oriented.
d) Services must be provided impartially, fairly, equitably and without bias.

e) People’s needs must be responded to, and the public must be encouraged to participate in policymaking.

f) Public administration must be accountable.

g) Transparency must be fostered by providing the public with timely, accessible and accurate information.

h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation (South Africa, 2006)

It is against this background that this study will focus on the right of the essential services employees to strike. According to the LRA, essential services personnel are people whose service interruption can endanger the life, personal safety or health of the whole or any part of the population. Therefore, this implies that essential services personnel are not expected to strike despite the fact that the Constitution allows them to do so like all citizens. This study intends to question the following whether Essential Services Public Servants have the right to strike? What are the conditions under which Essential Public Servants may go on strike?

1.3. Background to the problem

The 2007 and 2010 Public Service strike described below has prompted the need to conduct this study.

*During the 2010 public service strike, thousands of doctors, nurses, pharmacists and other health care workers embarked on an unprotected strike. This led to patients being neglected and their right to health care was severely compromised. There are serious consequences for workers who participate in an unprotected strike or in any conduct in contemplation or in furtherance of such a strike. Such persons do not fall within the protection provided by the LRA which states that persons who take part in*
a protected strike do not commit a delict or a breach of contract by doing so (Adams, 2011).

In some cases, minimum services must be provided to replace an essential service. Generally minimum services refer to those services required to protect life. For example, if medical staff went on strike, minimum services will be required to tend to medical emergencies. Medical tests or consultants would be put on hold until after the strike (Gibson, 2013).

In the absence of a minimum service agreement ratified by the Essential Services Committee (ESC), the Labour Relations Act No 66 of 1995, as amended (“the LRA”) prohibits workers employed in an essential service from striking. However, during the 2007 public sector strike, many employees who worked in essential services went out on strike, forcing government to bring in the army to assist in the running of some institutions and facilities (Grawitsky, 2007). Section 72 of the LRA provides for minimum service agreements. It states the following: The Essential Service Committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service, in which case: (a) the agreed minimum services are to be regarded as an essential service in respect of the employer and its employees; and (b) the provisions of section 74 do not apply (South Africa, 1995).

In addition, the Department of Labour has proposed that it be agreed that 20% of staff in essential services must remain at work during a strike and that the remaining 80% may embark upon strike action. Within this context, The Department of Labour proposes that the State and the unions in each sector must designate the positions of employees required to maintain the minimum service, which would then be ratified by the Public Service Co-ordinating Bargaining Council (PSCBC) and the Essential Services Committee (ESC) before becoming operational. The State has not agreed to this (Roskam, 2009).

Therefore, this study intends to investigate the essential service employees’ right to strike especially in the absence of minimum services agreement which could assist to regulate the involvement of Essential Services Employees in strike action.
1.4. Problem statement

It is essential to mention that the researcher is an employee of PSCBC has 17 years of experience within the institution. The researcher is currently working in the Dispute Management Section. Hence, the researcher has extensive background knowledge and experience on this topic.

Section 64(1) of the LRA recognises the constitutional right to strike but subject to the right to a number of limitations. Among those limitations, in terms of Section 65 (d) (ii) of the LRA, is a limitation which provides that no person may take part in a strike if that person is engaged in an essential service. Because the right to strike is so important, a limitation of this kind need to be justified and, to be justified it needs, among other things, to be limited. The essential services limitation on the right to strike in the LRA has not been subject to constitutional challenge and it is unlikely that it will be. This is because it is clearly justified and properly circumscribed in its scope. The Constitution permits rights in the Bill of Rights to be limited in terms of laws of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. There is thus a need to balance the right to strike with other fundamental rights such as those to health care, food, water and social security which are also enshrined in the Bill of Rights.

In order to achieve an appropriate balance, workers in essential services are conventionally excluded from the right to strike in open democracies and this exclusion has been sanctioned by the International Labour Organisation – but only to a limited extent. The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (“ILO”)(2006) recommends that the right to strike should only be restricted in relation to public servants exercising authority in the name of the State and in relation to genuinely essential services, namely: “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.

Moreover, the function of the International Labour Organization (ILO) in regard to freedom of association and the protection of the individual is to contribute to the effectiveness of the general principles of freedom of association, as one of the
primary safeguards of peace and social justice. In fulfilling its responsibility in the matter, the Organization must not hesitate to discuss at the international level cases which are of such a character as to affect substantially the attainment of the aims and purposes of the ILO as set forth in the Constitution of the Organization, the Declaration of Philadelphia and the various Conventions concerning freedom of association. The mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions (International Labour Organisation, 2006).

The Committee on Freedom of Association holds that a "minimum safety service" may be imposed in all cases of strike action in order to ensure the safety of persons, the prevention of accidents and the safety of machinery and equipment. Where "minimum operational services" are concerned, that is, those intended to maintain a certain level of production or services of the company or institution in which the strike takes place, the Committee on Freedom of Association has stated that: The establishment of minimum services in the case of strike should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) public services of fundamental importance (Gernigon, 1998).

To date, more than 14 years after the LRA came into effect; no minimum service agreement has been ratified by the ESC (Brand, 2013). Hence, this study intends to investigate the whether Essential services employees have the right to strike or not.

1.5. Motivation/ rationale for the study

The overall reason for the study is to make recommendations in order to establish an agreement to minimise Essential Public Servants from going on strike to ensure continuity in quality service delivery by Public Servants to the citizenry of the country in the event of there being a Public Service strike.
According to the researcher’s experience, the Minimum Services demands has been there since the signing of Resolution 1 of 2007 and it has never been implemented. The process of discussing this matter has been dragging for more than ten years; the PSCBC has failed to resolve this matter for some time now. This has resulted in Essential Service workers not being able to freely exercise their right to strike whenever the need arises. Like the 2007 round of negotiations, this time around the essential services, in particular the health services workers decided to strike although they are designated as Essential Services workers.

In addition, the LRA does not define minimum service. However, it is evident that what section 72 has in mind is a minimum service of a designated essential service; in other words, the ambit of the designated essential service is shrunk to the minimum service and those employees who were denied the right to strike while the broader essential service designation was in place, but who fall outside the defined minimum service, now regain the right to strike (Roskam, 2009).

To date, more than 16 years after the LRA came into effect; no minimum service agreement has been ratified by the ESC. There are perhaps two reasons for this according to the researcher. The first is that very few minimum service agreements have been negotiated or agreed on. Trade unions appear to have been unenthusiastic about endorsing strike action that has the effect of dividing the workforce between those who must continue to work (because they are employed in essential services) and who therefore continue to earn a salary during a strike, and those who are allowed to strike, and who must then take the full force of the strike on their pay packets – the result of the “no work no pay” principle. Employers, for their part, appear not to have considered it important to pursue the conclusion of minimum service agreements on the grounds that in their absence a larger proportion of public sector workers are precluded from striking. Ironically, once strikes have started public sector employers have shown little willingness or ability to prevent strike action by essential service workers as well. Because in South Africa essential service workers and non-essential service workers are included in the same bargaining unit, trade unions have preferred to pursue strike action across the whole bargaining unit, including essential service workers. No doubt they are aware that strike action by essential service workers, despite being unprotected, significantly increases the
pressure that is brought to bear on the employer and so enables both essential and non-essential service workers to leverage benefit from the strike by essential service workers (Brand, 2013).

1.6. Significance of the study

This section addresses the issue of who will benefit in the event of a Minimum Services Agreement being concluded for the Public Service within Essential services. Firstly, essential services employees will benefit from this study because of the new knowledge which the study intends to bring into the Labour Relations Field. Secondly, this study will benefit policy-makers in government in terms the policy recommendations which will come out of this study. Thirdly, the study will be of benefit to the ordinary public because they will get an opportunity to learn and understand how essential services personnel operate and the limitations to their right to strike.

1.7. Aims of the study

The main aim of the study is:

- To investigate if employees of the State who are employed within the category of Essential Services have the right to strike?

1.8. Objectives of the study

- To assess the conditions required for these employees to go on strike.
- To evaluate the impact of essential employees’ strike on essential services.
- To make recommendations on the way forward toward achieving a Minimum Service agreement.

1.9. Research questions

The main research question is:
What are the causes Essential Services Public Servants to go on strike?

The study also has the following secondary research questions:
1. What are the conditions under which Essential Public Servants may go on strike?
2. What is the impact of essential employees' strike on essential services?
3. What recommendations can be made on the way forward to achieving a minimum service agreement between the employer and employees?

1.10. Outline of the remainder of the study

The research will comprise of six chapters.

Chapter one will provide a background to the study, provide a problem statement, highlight the importance of the study, determine the research objective and provide a research question.

Chapter two will provide a literature review and aims to reviews all the relevant literature on the topic. This will include literature on the public service, essential services, minimum services and the right to strike.

Chapter three will include the research design which will be in the form of a qualitative study. A review of the population group used for the collection of data will be provided as well as an outline as to the data methodology used in the research. The research will be in the form of questionnaires and face to face interviews with representative from both Organized Labour Federations and the State as the Employer within the various sectors which include education, safety and security and health. The interviews will be conducted in the workplace to ensure that maximum information can be attained.

Chapter four will document the results of the data collection and will also include a discussion and interpretation of the findings.

Chapter five presentations the conclusions that are drawn from the research results and the explanation as to their significance, linking research findings to the literature review and the theoretical framework.
Chapter six provides a summary of the research objective and findings of the study, while providing the recommendations as well as suggestions for future research based on the subject matter.

1.11. Conclusion

This study will entail the conducting of a critical analysis into the right of essential public servants to embark on strike action and suggest recommendations for this category of employees to embark on strike action.

In the next chapter, a literature review is conducted to clarify the key concepts relating to the study.
CHAPTER 2
LITERATURE REVIEW

2.1. Introduction

The principle of the right to strike is internationally recognized. Although the right to strike is not set out explicitly in the International Labour Organizations (ILO) Conventions and Recommendations. It has been discussed on several occasions in the International Labour Conference during the course of preparatory work on instruments dealing with related topics, but for various reasons this has never given rise to international standards (Conventions or Recommendations) directly governing the right to strike (PSCBC, 2014). In South Africa, the supreme law is the Constitution and in terms of Section 23 of the Constitution of the Republic of South Africa and it has a section on labour relations, which is section 23 (2) (c) which clearly stipulates that everyone has the right to strike (South Africa, 1996). The Supreme law of the country is explicit about this matter, however, essential services public servants cannot strike because their services are essential to the lives of the citizens.

In addition, according to PSCBC (2014), the public service is unique in that when workers embark on a strike, the strike action it is not a purely defined labour process between an employer and employees but the public at large becomes a third player within the process. When public servants engage in industrial action they do not only deprive the community of certain rights, but indirectly deprive themselves from the same rights. Furthermore, within the public service itself, there are essential services public services whose employees cannot go on a strike because the citizens’ lives will be put in danger. Therefore, this study intends to investigate right of essential services public servants to strike with a specific focus on the following objectives: to assess the conditions required for these employees to go on strike; to evaluate the impact of essential employees’ strike on essential services and to make recommendations on the way forward toward achieving a Minimum Service agreement. The next section will define the key terms for this study.
2.2. Definition of terms

This section will discuss the key terminology in this study which includes the following: public servants, essential services and the right to strike. These definitions will be based on the relevant legislation and other sources.

2.2.1. Public Servants


Public Servants subscribe to the Code of Conduct for the Public Service, Section 3.2. which defines the relationship with the Public as follows:

An employee -

- promotes the unity and well-being of the South African nation in performing his or her official duties;
- will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service;
- is polite, helpful and reasonably accessible in his or her dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- has regard for the circumstances and concerns of the public in performing his or her official duties and in the making of decisions affecting them;
- is committed through timely service to the development and upliftment of all South Africans;
- does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- does not abuse his or her position in the Public Service to promote or prejudice the interest of any political party or interest group;
- respects and protects every person's dignity and his or her rights as contained in the constitution; and
- recognises the public's right of access to information, excluding information that is specifically protected by law (Public Service Commission: 1999).
In addition, Resolution 01 of 2013, Public Service Charter, as agreed to by the parties to the PSCBC states that employees of the State who fall within the scope of the PSCBC subscribe to the Service Charter. The following section lists the objectives of the Service Charter:

1.1. The Charter seeks to:

1.1.1. Improve service delivery programmes;

1.1.2. Reinforce the partners’ commitment to service delivery improvement for the benefit of all citizens;

1.1.3. Clarify the rights and obligations of each of the parties;

1.1.4. Acknowledge and reward excellent performance;

1.1.5. Professionalise and encourage excellence in the public service;

1.1.6. Enhance performance;

1.1.7. Facilitate a process to define service standards in various sectors;

1.1.8. Strengthen processes and initiatives that prevent and combat corruption;

1.1.9. Facilitate social dialogue among the partners;

1.1.10. Help government departments rise to the challenge of treating citizens with dignity and expectations meeting their demands equitably and fairly; and

1.1.11. Ensure an effective, efficient and responsive public service (Public Service Co-ordinating Bargaining Council, 2013).

The scope of the study will be confined to employees of the Public Service employed in terms of the Public Service Act 103 of 1994. According to Section 8 of the Public Service Act of 1994, the public service shall consist of persons who

(1) The public service shall consist of persons who—

(a) hold posts on the fixed establishment—

(i) classified in the A division and the B division;

(ii) in the services;

(iii) in the Agency or the Service; and

(iv) in state educational institutions;
(b) (i) having ceased to hold posts on the fixed establishment contemplated in paragraph (a), and not having retired or having been discharged, are employed additional to the fixed establishment or who are deemed to continue to hold posts under the circumstances contemplated in subsection 3 (c);
(ii) are appointed permanently additional to the fixed establishment;
(c) (i) hold posts on the fixed establishment other than posts referred to in paragraph (a);
(ii) are employed temporarily or under a special contract in a department, whether in a full-time or part-time capacity, additional to the fixed establishment or in vacant posts on the fixed establishment (South Africa, 1994). The next section will discuss what essential services are according to the relevant legislation.

2.2.2. Essential Service

Section 213 of the Labour Relations Act 66 of 1995 (LRA) defines essential service as follows: "Essential service" means (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population; (b) the Parliamentary service; (c) the South African Police Services" (South Africa, 1995).

The Freedom of Association Committee of the Governing Body of the ILO defines essential services in Section 541 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO as a service whose interruption could endanger the life, personal safety or health of the whole or part of the population. The Committee further goes on to say that the Essential Services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country and moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population (International Labour Organisation, 2006).

According to Bendix (2010), the definition of essential service was fairly wide ranging and the reason for the prohibition on industrial action in these services was that any
interruption of service would occasion too great a hardship on society at large, that a
dispute in these services extend beyond the realms of the employment relationship
and that society therefore had the right to intervene. Bendix (2010) also went further
to agree with the Freedom of Association Committee and defines essential service as; “A service the interruption of which will endanger the life, personal safety or
health of the entire population or part thereof” (Bendix, 2010).

In terms of Section 585 of the of the Digest of decisions and principles
of the Freedom of Association Committee of the Governing Body of the ILO, the
following May be considered essential services:

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and the cleaning of schools
- air traffic control (International Labour Organisation, 2006)

Bendix (2006) includes the Parliament and the Police as essential services and
provides a list of essential services that are designated as such by the Essential
Services Commission (up to and including 27 March 1998):

- Municipal traffic services and policing
- Municipal health
- Municipal security
- Water distribution and supply
- Security services: water affairs and forestry
- Power generation, transmission
- Blood transfusion services
- Refuse and sewage services
- Emergency health services
- Nursing, medical and paramedical services
• Various support services in medical establishments
• Various support services in the Department of Defence
• Various services provided by the contract computer service of the Department of State Expenditure (Bendix, 2006).

In contrast, in terms of Section 585 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO the Committee has considered that, in general the following do not constitute essential services in the strict sense of the term, and therefore the prohibition to strike does not pertain to the following public servants:

• Radio and Television
• The Petroleum Sector
• Ports (Loading and unloading)
• Banking
• Computer Services for the collection of excise duties and taxes
• Department Stores
• Pleasure parks
• The Metal Sector
• The Mining Sector
• Transport Generally
• Refrigeration Enterprises
• Hotel Services
• Construction
• Automobile Manufacturing
• Aircraft repairs
• Agricultural activities
• The supply and distribution of foodstuffs
• The Mint
• The Government Printing Services
• The State Alcohol, Salt and Tobacco monopolies
• The Education Sector
• Metropolitan transport
• Postal Services.
2.2.3. The right to strike

**In terms of Section 23 of the Constitution of the Republic of South Africa;**

Labour relations.—

(1) Everyone has the right to fair labour practices.

(2) Every worker has the right—

(a) to form and join a trade union;

(b) to participate in the activities and programmes of a trade union; and

(c) to strike (South Africa, 1998).

In South Africa, the right to strike is a constitutional right and it is generally regulated by section 23 of the Constitution of the Republic of South Africa Act 108 of 1996 and other labour legislation that govern employment relationships (Bhorat and Cheadle, 2009). Similarly, South Africa laws recognize the right of workers to strike as enshrined in various international, national and regional instruments (Simmons, 2009). This is why it is legal for employees to collectively come together to form trade unions for the purpose of collective bargaining (Olson, 2009) and other common causes such as wage negotiations, better conditions at workplaces, common voice on concerns related to welfare of the workers and so on (Dundon et al., 2004 and Kola 2014).

Furthermore, the Labour Relations Act of 1995 (LRA) defines a strike in section 213 as “the partial or complete concerted refusal 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 purpose 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.”

The Committee on Freedom of Association has recognized that strike action is a right and not simply a social act, and has also:

1. made it clear it is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy;

2. reduced the number of categories of workers who may be deprived of this right, as well as the legal restrictions on its exercise, which should not be excessive;
3. linked the exercise of the right to strike to the objective of promoting and defending the economic and social interests of workers (which criterion excludes strikes of a purely political nature from the scope of international protection provided by the ILO, although the Committee makes no direct statement or indication regarding sympathy strikes other than that they cannot be banned outright; this matter will be examined subsequently);

4. stated that the legitimate exercise of the right to strike should not entail prejudicial penalties of any sort, which would imply acts of anti-union discrimination. (International Labour Organisation, 2006)

According to Du Toit (2012) points out that also excluded from the right to strike are workers in ‘essential services.’ Large parts of the public sector are designated as such and much of the violence surrounding strikes in recent years has arisen in this sector and has involved these services, leading to widespread concern about the efficacy of legal enforcement. It is submitted, however, that the underlying problem is not simply one of enforcement, but rather raises questions about the appropriateness of the existing regulation of disputes in essential services and, indeed, the concept of ‘essential services’ (Du Toit, 2012).

Section 526 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO illustrates the benefit of strikes to employees:

The occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers.

Section 527 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006) illustrates the benefit of strikes to organizations that are responsible for the defending of workers such as Trade Union movements:
Organizations responsible for defending workers’ socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living”.

According to Chicktay (2012), in a case, where the Peruvian government prohibited protest action, the Committee on Freedom of Association held that strikes are one of the essential means available to workers and their organizations for the promotion and protection of their occupational and economic interests in the broad sense of the term. It was further stated that these interests do not only have to do with obtaining better working conditions but also with seeking solutions to economic- and social-policy questions and to labour problems of any kind, which are of direct concern to the workers. The ILO has applied this principle to enable employees to protest against a wide range of socio-economic issues adopted by the government (Chicktay, 2012).

According to the Constitutional Court: “It is true that the inclusion of socio-economic rights may result in courts making orders which have direct implications for budgetary matters. However, even when a court enforces civil and political rights such as equality, freedom of speech and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of legal aid, or the extension of state benefits to a class of people who formally were not beneficiaries of such benefits. In our view it cannot be said that by including socio-economic rights within a bill of rights, a task is conferred upon the courts so different from that ordinarily conferred upon them by a bill of rights that it results in a breach of separation of powers” (Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996 1996 4 SA 744 (CC) par 77) (Chicktay, 2012).

2.3. South African Legislative Frameworks

The following section will discuss relevant legislation to the study.

In terms of Section 23 of the Constitution of the Republic of South Africa; Labour relations -

(1) Everyone has the right to fair labour practices.
(2) Every worker has the right-
   (a) to form and join a trade union;
   (b) to participate in the activities and programmes of a trade union; and
   (c) to strike (South Africa, 1996).

This section of the Constitution has raised a lot of controversial court cases in South Africa. For example, in the judgment of the Constitutional Court in (South African Police Services) SAPS v (Police and Prisons Civil Rights Union (POPCRU:)

(“POPCRU”) emphasised the importance of a strict interpretation of essential services so that the right to strike would not be unnecessarily limited. The court stated:

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in s 23(2)(c) of the Constitution. The interpretive process must give effect to this purpose within the other purposes of the LRA as set out in s 1(a). The provisions in question must thus not be construed in isolation… a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike. Were legislation to define essential service too broadly, this would impermissibly limit the right to strike.” (Calitz, 2013). This is one example whereby the trade unions could not see eye to eye with its employees. This subject is very controversial and needs further research. Therefore, this study wants to question the conditions within which essential services public servants can embark on a strike action.
2.3.2. Public Service Act No. 104 of 1994

Section 8 speaks of the composition of the public service and is silent on the issue of strikes. The composition is discussed below:

Composition of public service

8. (1) The public service shall consist of persons who-
   (a) hold posts on the fixed establishment-
      (i) classified in the A division and the B division;
      (ii) in the services;
      (iii) in the National Intelligence Services; and
      (iv) in state educational institutions;
   (b) (i) having ceased to hold posts on the fixed establishment contemplated in paragraph (a), and not having retired or having been discharged, are employed additional to the fixed establishment or who are deemed to continue to hold posts under the circumstances contemplated in subsection (3) (c);
      (ii) are appointed permanently additional to the fixed establishment;
   (c) (i) hold posts on the fixed establishment other than posts referred to in paragraph (a);
      (ii) are employed temporarily or under a special contract in a department, whether in a full-time or part-time capacity, additional to the fixed establishment or in vacant posts on the fixed establishment (South Africa, 1994).

2.3.3. Labour Relations Act 66 Of 1995

The Labour Relations Act (LRA) is one of the key legislative frameworks for the study because it advocates for the establishment of bargaining councils in the public service. Section 35 and 36 discusses bargaining councils, and section 72 discusses essential services.

35. Bargaining councils in public service

There will be a bargaining council for-
   (a) the public service as a whole, to be known as the Public Service Co-ordinating Bargaining Council; and
   (b) any sector within the public service that may be designated in terms of section 37.
36. Public Service Co-ordinating Bargaining Council

(1) The Public Service Co-ordinating Bargaining Council must be established in accordance with Schedule 1.8

(2) The Public Service Co-ordinating Bargaining Council may perform all the functions of a bargaining council in respect of those matters that-

(a) are regulated by uniform rules, norms and standards that apply across the public service; or

(b) apply to terms and conditions of service that apply to two or more sectors; or

(c) are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector.

72. Minimum services The essential services committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service, in which case-

(a) the agreed minimum services are to be regarded as an essential service in respect of the employer and its employees; and

(b) the provisions of section 74 do not apply.

Chicktay (2012) stated that this right to strike is also given effect to in chapter IV of the South African Labour Relations Act 66 of 1995 (LRA). Section 13 of the Labour Relations Act states specifically that the purpose of this Act “is to give effect to South Africa’s obligations as a member of the International Labour Organization”. In addition to this, section 34 of the LRA, requires interpretation of the LRA in accordance with our international law obligations (Chicktay, 2012).

2.3.4. Minimum Service Agreement- PSCBC: Resolution 01 of 2007

According to the PSCBC (2014) the essential services right to strike and availability of the minimum services agreement has been a matter of discussion for some time between the relevant stakeholders. The discussion below bears testimony to this matter.

Resolution 1 of 2007 established a Joint Technical Working Group to develop a minimum service level agreement. The Joint Technical Working Group (JTWG) held several meetings in 2008. Council then also appointed an independent facilitator who would have submitted reports to Council on a monthly basis.
The facilitator conducted a desktop international comparison and submitted his findings to Council. On 26/2/08 it was agreed that the employee and the employer parties to the JWTG should submit their draft agreement proposals for consideration at the meeting on 10/3/08.

On 10/3/08 the JWTG requested the facilitator to submit a draft agreement from the proposals for its consideration on 31/3/08. The draft agreement proposals were duly submitted. The JWTG did not reached consensus on all the issue and that was reported to Council.

Council agreed that the facilitator has done his work and agreed to negotiate on issues not agreed to. No agreement could be reached in Council and the process was taken for mediation. Mr Mohammed Dolly was appointed as the mediator. After mediation, the process was referred back to Council and Council could not conclude an agreement.

In 2009 Council decided to resuscitate the JTWG. The Technical working Group met in August 2009 to finalise the Agreement. The JTWG met on 16 August 2009 to work on the draft agreement. The draft agreement was immediately after the JTWG meeting submitted to Council for deliberations.

Council did not deliberate on the matter.

Council at a its meeting on 28 January 2010 agreed that all the task teams established in terms of Resolution 1 of 2007 be resuscitated. The JTWG was also resuscitated. JTWC met on 16 February 2010 to work on the draft agreement.

The matter could not be concluded. (Public Service Co-ordinating Bargaining Council, 2014).

The above discussion paints a picture whereby to date, the Minimum Services Agreement has not been signed by the relevant parties which will enable essential services public servants to strike. Therefore, according to the LRA (1995) this category of public servants is not allowed to embark on strike action because of the nature of their work. If they decide to do so, that is done illegally (PSCBC, 2014).
2.3.5. Public Service Co-ordinating Bargaining Council’s Constitution – 1997

The PSCBC Constitution does not speak of strikes in general but the objectives of the Council are highlighted below.

In terms of Section 3 of the PSCBC Constitution (1997), the Objectives of the Council are defined:

*The objectives of the Council, within its registered scope, are to—*

a) generally enhance labour peace in the public service;
b) promote a sound relationship between the employer and its employees;
c) in terms of the Act and this constitution, negotiate and bargain collectively to reach agreement on matters of mutual interest to the employer and employees represented by admitted trade unions in the Council;
d) provide mechanisms for the prevention and resolution of disputes between—
   (i) the employer and trade unions admitted to the Council;
   (ii) the employer and trade unions not admitted to the Council; and
   (iii) the employer and employees, where the employer has the requisite authority to resolve such disputes;
e) conclude, supervise and enforce collective agreements;
f) comply with its powers and duties in terms of the Act and this constitution;

g) consider and deal with such other matters as may affect the interests of the parties to the Council; and

h) promote effective communication and co-ordination between the Council and sectors designated in terms of clause 21.3. (Public Service Co-ordinating Bargaining Council, 1997). This Council plays an important role in South Africa in terms of bargaining on all matters related to the labour issues in the public service. The next section will discuss the international bodies involved in labour relations matters internationally.
2.4. International Labour Relations Bodies

2.4.1. International Labour Organisation (ILO)

In Sections 520 - 525 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (20026) illustrates the importance of the right to strike and its legitimate exercise:

520. While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organizations, it has regarded it as such only in so far as it is utilized as a means of defending their economic interests.

521. The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.

522. The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.

523. The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

524. It does not appear that making the right to call a strike the sole preserve of trade union organizations is incompatible with the standards of Convention No. 87. Workers, and especially their leaders in undertakings, should however be protected against any discrimination which might be exercised because of a strike and they should be able to form trade unions without being exposed to anti-union discrimination.

525. The prohibition on the calling of strikes by federations and confederations is not compatible with Convention No. 87 (International Labour Organisation, 2006).
In addition, Sections 581-584 of the Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006) speaks through the right to strike by essential services:

581. To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

582. What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.

583. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an “essential service” in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

584. It would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not. (International Labour Organisation, 2006)

Even though the right to strike is a constitutional right, it must be exercised in accordance with the provisions of the Labour Relations Act (Republic of South Africa, 1995). This is in line with the International Labour Organisation’s (ILO) view above that strike action is one of the fundamental means available to workers to promote their interests (ILO, 2001) (Deacon, 2014).

According to the Institute of Employment Rights (2008), the ‘case law’ of the ILO’s Committee on Freedom of Association recognises that industrial action usually causes a degree of inconvenience towards consumers. However, this is not
considered a sufficient reason to prohibit or restrict the workers’ right to strike. Such a restriction must be based on public welfare considerations. The standard response of the supervisory bodies of the International Labour Organization to public welfare considerations is that the right to strike may only be restricted or prohibited in the following cases: in the public service, only for public servants exercising authority in the name of the State; in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); or in the event of an acute national emergency and for a limited period of time (The Institute of Employment Rights, 2008).

2.4.2. Committee on the Freedom of Association

According to the ILO (http://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm, accessed on the 17 August 2014) freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of Conventions Nos. 87 and 98 on freedom of association and collective bargaining, the ILO came to the conclusion that the principle of freedom of association needed a further supervisory procedure to ensure compliance with it in countries that had not ratified the relevant conventions. As a result, in 1951 the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant conventions. Complaints may be brought against a member state by employers’ and workers’ organizations. The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers, and workers. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.

Governments are subsequently requested to report on the implementation of its recommendations. In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts. The CFA may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and the social
partners through a process of dialogue. In over 50 years of work, the CFA has examined over 2,300 cases. More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments on freedom of association during the past 25 years (International Labour Organisation, 2014).

The next section will discuss the National Labour Relations Bodies in South Africa.

2.5. National Labour Relations Bodies

Discuss the role of each body in general and what do you say about essential services strikes

2.5.1. Essential Services Committee (ESC)

These committees are set up according to the Labour Relations Act 66 of 1995.

Essential services committee

(1) The Minister, after consulting the National Economic Development and Labour Council, and in consultation with the Minister for the Public Service and Administration, must establish an essential services committee under the auspices of the Commission and appoint to that committee, on any terms, persons who have knowledge and experience of labour law and labour relations.

(2) The functions of the essential services committee are-

(a) to conduct investigations as to whether or not the whole or a part of any service is an essential service, and then to decide whether or not to designate the whole or a part of that service as an essential service;

(b) to determine disputes as to whether or not the whole or a part of any service is an essential service; and

(c) to determine whether or not the whole or a part of any service is a maintenance service.

(3) At the request of a bargaining council, the essential services committee must conduct an investigation in terms of subsection (2)(a) (South Africa, 1995).
Du Toit (2012) further elaborates on the duties and responsibilities of the ESC, which is charged with investigating and deciding whether the whole or part of a service is to be designated as essential. The ESC is also empowered to deal with disputes regarding whether a service is essential and whether employees are engaged in an essential service (Du Toit, 2012).

Under the law, the Essential Services committee is conferred with the responsibility of considering and determining which service qualifies as an essential service. Once a service is qualified as an ‘essential service’, then such a service is prohibited from engaging in a strike action (Basson, 2009).

**2.5.2. Public Service Co-ordinating Bargaining Council**

The PSCBC Constitution defines the Parties to the Council as Organized Labour & the State as the Employer. The Parties to the Council have committed to the following:

*Parties need to find a solution to the current impasse of determining essential services within the Public Service. The proposed conceptualization of reaching an agreement based on the number of employees to be designated as minimum services is not bearing the necessary results.*

*Public Servants have the ethical responsibility of delivering services to citizens and ensuring the optimal functioning of the State. However they also have the need to exercise the right to strike to legitimately promote and defend their economic and social interests.*

*Finding the right balance would necessitate a paradigm shift from parties and a willingness to compromise as to achieve. This can only be achieved in the creation of an environment that specifically caters for the unique needs and environment of the public service.* (Public Service Co-ordinating Bargaining Council, 2014)

The parties to the PSCBC agreed on the above, it is therefore the official position of the organized labour federations.
2.6. Essential Services Personnel Strike

According to Chima (2013), strikes are a strategy used by an employee or group of employees in an attempt to force an employer to meet their demands whether economic or otherwise. Specifically, strikes are used as a deadlock breaking mechanism when employer/employee negotiations have reached an impasse during collective bargaining. It has been suggested by some authorities that in the absence of the right to strike ‘collective bargaining’ would amount to nothing more than ‘collective begging’ (Chima, 2013). The next section discusses the impact of essential services personnel strikes.

2.6.1. The impact of essential services strikes

According to Pillay (2012), the past 15 years of the ESC’s existence have demonstrated that strikes in health, police, municipal and court services have not resulted in any reported loss of life as a result of those strikes. Frequent and sometimes prolonged electricity and water cuts have inconvenienced communities and even devastated businesses but these too have not resulted in any reported loss of life. We know from these experiences that these services can be minimized without endangerment (Pillay, 2012).

2.6.1.1. Education

Adams (2011) states that during the 2007 and 2010 public sector strikes it seemed as if educators did not take into consideration their obligations and at times acted irresponsibly. The actions of the educators had far reaching consequences over the next few years. The strike by educators also deepened an already widening rift between parents, learners and the Education Department on the one side and teachers and teacher trade unions on the other side (Adams, 2011).

According to Calitz and Conradies, in August 2010 South African teachers who participated in a strike by public servants caused schools across South Africa to close a few weeks before year-end exams. Matric pupils were the hardest hit and did not receive tuition for a period of three weeks before the most important examination of their twelve years at school. Unions representing about 1.3 million public workers,
including teachers, embarked on a strike that lasted for 20 days. The conduct of some teachers who intimidated and assaulted those who did not strike and who carried on teaching was severely criticised (Calitz, 2013).

2.6.1.2. Health

According to Chima (2013), doctor and healthcare worker (HCW) strikes are a global phenomenon with the potential to negatively impact on the quality of healthcare services and the doctor-patient relationship. Strikes are a legitimate deadlock breaking mechanism employed when labour negotiations have reached an impasse during collective bargaining. Striking doctors usually have a moral dilemma between adherence to the Hippocratic tenets of the medical profession and fiduciary obligation to patients. In such circumstances the ethical principles of respect for autonomy, justice and beneficence all come into conflict, whereby doctors struggle with their role as ordinary employees who are rightfully entitled to a just wage for just work versus their moral obligations to patients and society (Chima, 2013).

2.6.1.3. Policing

Although section 65 of the LRA limits the right to strike, it has been observed by the Constitutional court that “not all employees employed by the SAPS are engaged in essential services.” And as such, the court has confirmed that not all staff employed by the South African Police Service (SAPS) is prohibited from striking. The court held that only those SAPS members employed under the South African Police Service Act (SAPSA) are engaged in providing essential services under the LRA. Sections 65(1)(d)(i) and 71(10) of the LRA prohibits employees engaged in essential services from engaging in strike action (Kola, 2014).

The judgment of the Constitutional Court in SAPS v POPCRU (“POPCRU”) emphasised the importance of a strict interpretation of essential services so that the right to strike would not be unnecessarily limited. In the POPCRU case the Constitutional Court held that not all employees of the SAPS are rendering essential services, but only those who are members (uniformed workers) of the SAPS and thus only these members’ right to strike could be limited.


2.7. Balancing the rights of Employees vs Employers

The right to strike is a universal topic which has affected various countries in the world according to literature. For example, in 1922, Storey (1922:99) in his article entitled “The right to strike” he points out that,

“Throughout the discussions between the employer and the employee, it is constantly asserted that the “right to strike” is protected by the federal constitution and cannot be denied or abridged. The phrase is used very carelessly and is made on the basis for the most extreme claims, and it is therefore important that “the right to strike” should be defined and its limitations brought home to the public”.

From the above quotation, it can be seen that the right to strike has always had limitations from the onset. And in this regard, South Africa is not an exception and the introduction of the LRA section IV is a consequence of this limitation. Secondly, in 1928, Mason (1928: 342) in his article entitled “the right to strike” also indicated that “neither the common law nor the Fourteenth Amendment confers the absolute right to strike in the United States of America”. Thirdly, in an article entitled “Structuring collective bargaining in Public Employment” by Wellington and Winter (1970:806), they also advance this discussion by saying that “the interruption of most governmental services will severely inconvenience beneficiaries of those services who will, as voters, press for a settlement. Therefore, the public employee strike is a powerful political weapon. If it can be used as a method for breaking collective bargaining impasses, will give employee unions a disproportionate share of political power”. From the above quotation, it is clear that strikes in the public service also have political power because the citizens’ rights can be affected by such a strike. In the South African public service, there are two types of public servants which are ordinary ones and essential services ones. The LRA prohibits essential services employees to strike because of the types of services which they offer which are discussed in section 2.2.2 of this chapter.
Furthermore, the PSCBC Constitution (2014) purports that,

*Public Servants have the ethical responsibility of delivering services to citizens and ensuring the optimal functioning of the State. However they also have the need to exercise the right to strike to legitimately promote and defend their economic and social interests. Finding the right balance would necessitate a paradigm shift from parties and willingness to compromise as to achieve. This can only be achieved in the creation of an environment that specifically caters for the unique needs and environment of the public service* (Public Service Co-ordinating Bargaining Council, 2014).

This discussion indicates that there is no middle ground in this issue and there is no balance of rights between both the employers and employees. According to Pillay (2012) ideally, Minimum Service Agreements (MSA’s) should be concluded as soon as a service is designated essential and in good time before a strike. Concluding MSA’s requires objective and dispassionate minds, not the inflammatory climate that immediately precedes and exists during strikes. MSA’s should be reviewed periodically to meet changed circumstances (Pillay, 2012).

In addition, according to Chicktay (2012) the right to strike should be seen as a civil and/or political right, which is given greater protection under international law. This is because it is closely associated with traditional civil and political rights such as freedom of association, freedom of speech, the right to life, the right to dignity, the right not to be subject to slavery and the right to property (Chicktay, 2012). Therefore, the absence of a Minimum Services Agreement in the South African public service has left essential services employees out in the cold because they know that their ‘right to strike” is not absolute. Their jobs and duties come first, not their rights. Therefore, this study’s objective is to make recommendations on the way forward toward achieving a Minimum Service agreement which will enable essential services employees to exercise their constitutional right to strike like other public servants in South Africa.

### 2.8. Conclusion

Employees usually associate in the form of trade unions for the purpose of bargaining collectively. Without the right to strike employees would not be taken seriously during bargaining. The right to strike is thus essential for the purpose of
collective bargaining and for the freedom of association of workers. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not contain a specific provision relating to strikes. Parties to the Convention have, however, argued that the right to freedom of association guaranteed in article 11 should be interpreted to provide employees with the right to strike. The International Labour Organisation (ILO) Conventions also do not contain an express right to strike, yet the ILO Committee of Experts have interpreted ILO Conventions 87 and 98, which provide employees with a right to freedom of association, to include a right to strike.

According to Du Toit & Ronnie (2012), the Labour Relations Act sets out to promote ‘orderly collective bargaining’ and ‘the effective resolution of labour disputes’. The violence which has characterised a number of strikes in recent years, mostly in the public sector, has cast doubt on the effectiveness of the Act in this vital area. One response has been the suggestion that the state should be able to prohibit strikes in exceptional circumstances – in effect, dismissing and bypassing the provisions of the Act. In an apparent step in this direction, one of the amendments originally proposed to the LRA would have enabled the CCMA to suspend the right to strike by intervening in disputes if ‘the director believes it is in the public interest to do so’ (Du Toit and Ronnie, 2012).

From the above it is evident that an individual cannot be denied the right to strike within the ambiits of the law however the reality on the ground is contrary to the above. In 2007 and 2010 public service strikes, there was gross violation of essential public servants going on strike, disadvantaging quality service delivery to the citizenry of our country; this is indeed frowned upon especially if the safety and livelihood of our people of South Africa is denied. It is important that the people of the country are also protected in the event of a public service strike. The Trade Unions and the State as the Employer need to sharpen their tools and go back to the negotiating forum and seek a resolution to the problem of there being a lack of service delivery within the essential services in the event of there being another public service strike.
CHAPTER 3

RESEARCH METHODOLOGY

3.1. Introduction

This chapter will outline the research design and will explain the research methodology that will be used. The research methodology is of fundamental importance as it clearly defines the research process that will be followed, including the tools and procedures to be employed in the study.

This chapter also includes the elements of design, techniques and methodology utilised and contained in the study. Section 3.2 covers the research design. Section 3.3 deals with research methodology and techniques. Sections 3.4 and 3.5 focus on the nature of the population and sampling, respectively. Section 3.6 examines research instruments. Section 3.7 looks at data collection methods. Section 3.8 considers data analysis. Issues of data validity and reliability are addressed in Section 3.9. The ethical considerations are explored in Section 3.10. and Section 3.11 allows the limitations of this study to be discussed, The chapter concludes with final suppositions, remarks and conclusions in Section 3.12.

3.2. Research Design

Mouton (2001) defines a research design as a plan or blueprint of how you intend to conduct the research, a research design focuses on the end logic of the research. In addition, Bless & Higson-Smith (1995), by contrast, define research design as “a specification of the most adequate operations to be performed in order to test a specific hypothesis under given condition.”

However De Vos (2005) concurs with Rubin & Babbies’s (2001) definition, the term research design only for those groups of small, worked out formulas from which prospective (quantitatively orientated) researchers can select or develop one (or more) suitable to their specific research goals and objectives. (De Vos, 2005).
The common elements within the definition of design include the following; an activity and a time based plan, always based on the research question, it supplies a guide to the selection of sources and types of information, it provides a framework for specifying the relationship among the study's variables and provides a procedure outline for every research activity.

3.3. Research Approach

3.3.1. Qualitative Research

For the purposes of this study, the qualitative research methodology will be used. Creswell (2007) stated that qualitative research is an inquiry process of understanding where a researcher develops a complex, holistic picture, analyses words, and reports detailed views of informants and conducts the study in the normal setting.

According to Denzin & Lincoln (2005), in qualitative research, a researcher often approaches reality from a constructive position, which allows for multiple meanings of individual experiences (Creswell, 2012).

Creswell (2007) defines design in the qualitative approach as “the entire process of research from conceptualising a problem, to writing the narrative”, while tradition of inquiry is the term used to refer to “an approach to qualitative research that has a distinguished history in one of the disciplines and that has spawned…distinct methodologies that characterises its approach.

This study will be quantitative in nature since it will utilise face to face interviews for data collection.

3.4. Research Population

According to Babbie (2005), the population for a study is that group (usually of people) about whom we want to draw conclusions. It is not possible to study all the members of the population that interests us, and can never make every possible
observation of them. With any survey, it is necessary to clearly define the target population, which can be defined as, ‘that group which constitutes the defined population from a statistical viewpoint’. McBurney (2001) refers to a population as the totality of persons, events, organisation units, case records or other sampling units with which the research problem is concerned.

The population for the study will be composed of members of the Public Service Co-ordinating Bargaining Council (PSCBC). This council is made up of 60 members – 30 of whom are government or State representatives and 30 are from various trade unions in various sectors in the country.

3.5. Sample and Sampling

According to Kothari (2004), Sampling may be defined as the selection of some part of an aggregate or totality on the basis of which a judgement or inference about the aggregate or totality is made, it is the process of obtaining information about an entire population by examining only a part of it.

The Researcher therefore undertakes to draw conclusions based on the selected participants. The researcher will interview the 10 key and high level stakeholders from essential services sectors which are 5 Health sector representatives, 5 Police sector representatives, and also 6 Trade Union representatives. In total 16 key respondents will be interviewed by the researcher. Out of the 16 respondents, 12 will be members of the PSCBC and the other 4 would be high level essential services personnel.

3.5.1. Stratified Purposive Sampling

Creswell et al, (2012) defines stratified purposive sampling as means of selecting participants according to preselected criteria relevant to a particular research question. The sample size may or may not be fixed prior to data collection. And very often depends on the resources and the time available by the researcher (Creswell, 2012). The criteria for selecting the respondents is that all the 10 respondents belong
to the essential services sectors and the last 6 represent the government or employer.

3.6. Data Collection

3.6.1. Interviews

De Vos (2005) define interviewing as the predominant mode of data or information collection in qualitative research. Seidman (as cited by De Vos, 2005) emphasises that the researcher should undertake the interviews because of interest in other people’s stories. Denscombe (2003) alternatively asserts that interviews are an attractive proposition for the project researcher. Initially they do not appear to involve much technical paraphernalia being required in order to collect the information. Denscombe (2003) asserts that interviews are generally conducted with lower members, as opposed to questionnaire surveys, this denoting that the selection of interview subjects is more likely to be based on non-probability sampling.

Challenges that face the researcher when using qualitative research interviews include establishing rapport to gain information from the participants; coping with the unanticipated problems; payments to interviewees in the field; and recording and managing the large volume of data generated by even relatively brief interviews (De Vos, 2005).

An essential requirement of the employment of unstructured or open-ended questionnaires in interviewing needs to be an interest in understanding the experience of other people and the meaning they make of that experience. Open-ended questionnaires are less focused and discursive, allowing the researcher and participant to explore an issue. These are used to determine individual perceptions, opinions, facts and forecasts, and reactions to initial findings and potential solutions (De Vos, 2005).

3.6.2. Strengths and weaknesses of interviews

De Vos (2005) postulates that interviewing is one of the weakest methodologies because the participant is likely to encourage the researcher with the ‘official account’
which may not be valid. Since the interviews involve personal interaction and co-operation, participants in Cullinan were unwilling to share the status of their social grant.

De Vos (2005) argues that, despite these weaknesses, interviews have certain strengths, in that they are a useful way of swiftly gathering large amounts of data and are an especially effective way of extracting in-depth data.

3.6.3. Face to face interviews

The purpose of employing face-to-face interviews for the data collection process was to compensate for the limitations of the focus group approach. The in-depth interviews, with the various racial, gender and age-groups, significantly assisted in gathering more information on the issues under examination (Denzin and Lincoln, 2000).

The face-to-face interviews provided the opportunity for the respondents to express their views in their own words and in their environment, structuring their answers as they see fit. The questions phrasing reflected the use of the ordinary conversation of the respondents in order to contextualise the discussions (Creswell, 2003).

3.7. Data Analysis

Bailey (as quoted by De Vos, 2005) argues that data analysis is the process of bringing order, structure and meaning to the mass of collected data. He states that it is a messy, ambiguous and time consuming, but creative and fascinating process and does not proceed in a linear fashion. The study will apply graphical and basic statistical methods in analysing the collected data.

A review by Robson (1993, in Collins and Hussey, 2003) noted that no systemic conventions for the analysis of qualitative data exist. Silverman (1993, in Collins and Hussey, 2003) echoes similar sentiments and contends that there is no theoretical base for the analysis of qualitative data. The data collected in this study process is analysed utilising of both qualitative data analysis methods and quantitative data analysis methods. A combination of both data analysis methods in phenomenology has been used successfully in the qualitative data analysis, and was found to be

For the qualitative data assessment in this study content analysis will be the main method of examination. Content analysis can be used for the purpose of both qualitative and quantitative data analysis. “It examines words or phrases within a wide range of texts, which includes books, interviews and speeches” (Babbie and Mouton, 2001). In content analysis the words and phrases of research participants are regurgitated as they are, within specified codes. These pre-determined codes are used to identify the presence of words or phrases that either confirm or discredit her or his arguments, along with those which emerge in literature, for a particular research exercise. Emphatic phrases and repetition are considered imperative to content analysis as they can reveal the subjective view of a contributor by research participants. Content analysis has however been criticised as forming a simplistic view of data research (Silverman, 1993, in Collin and Hussey, 2003).

In an effort to counter the criticism articulated, around the lack of sophistication of qualitative data analysis, by Silverman (1993, in Collin and Hussey, 2003), this study has utilised both the qualitative and quantitative research analysis methods. The purpose of the use of both techniques is that they augment each other. A combination of both data analysis methods can be useful in simultaneously explicating compound data, as well as presenting it in raw form.

Despite his criticism, Silverman (1993, in Collin and Hussey, 2003) postulates that content analyses may be carried out by way of ‘sampling data’. He states that sampling data is the process of identifying the most pertinent information and presenting it, in the exact form as respondents provided it, in the report. Secondly, coding units or themes, in the form of words or phrases, can be utilised to group data together. An advantage of content analysis is it is a relatively uncomplicated and inexpensive method. Another advantage is that it produces reliability data and minimal primary data, which are lost in analysis. Content analysis is useful in that it can reveal the frequency of information captured.
The process of this study will be analysis of data. Subsequent to data collection, analysis of data is done with the use of content analysis, along with charts and frequency tables.

### 3.8. Reliability and validity

Reliability refers to the credibility of research findings (Hussey and Hussey, 1997). It may also be described as the extent to which a research methodology can produce similar results, when applied elsewhere, under similar circumstances. According to Babbie and Mouton (2001), “there can be no validity without reliability… [and] a demonstration of the former suffices to establish a presence of the latter.”

There are different ways in which the validity and reliability of documents or information can be tested. Babbie and Mouton (as quoted by De Vos, 2005) recommend the following techniques; comparing the relevant document with other written documents or data collected in other ways, when possible and verifying data by interviewing other informants, persons in the same roles or persons knowledgeable on the subject or who were personally involved in the event.

The reliability of responses may be checked using instrument reliability - by evaluation of similar responses at two or more points in time. Alternatively analyst reliability may be used - by comparing results of two or more researchers at the same points in time. As the analysis of responses or documents is frequently a relatively subjective process more attention must be paid to assessment of inter-analyst reliability than to assessment of inter-document reliability. (De Vos, 2005) To ensure validity and reliability the course leader will perform tests of the data gathered.

Babbie and Mouton (2001) have come up with two distinctions of validity - internal and external validity. “A research study is said to be internally valid if any changes in the dependant variable resulted only from the introduction of the independent variables.” External validity is the degree to which the results of the study can be generalised to a population outside the research.

Hussey and Hussey (1997) assert that reliability of research findings is not a paramount consideration in the phenomenological research, though considered a
significant detail needing to be contemplated. According to Hussey and Hussey (1997), furthermore, in both phenomenological and quantitative studies, validity of research findings sometimes carries more significance than the reliability of research. “Validity is the extent to which the research findings accurately represent the situation under study” (Hussey and Hussey, 1997).

Validity of the findings of this research has been ascertained and demonstrated by the meticulous manner in which the research methodologies have been applied in this study. These have been described and justified, particularly in this chapter.

The findings of this study can be regarded as high in validity, therefore, due to the following factors:

The design of this study was informed and based on an extensive literature study, intended at guiding the study process. The literature study enhances validity of a study by elucidating the prevailing situation which a researcher plans to examine further, and by providing empirical evidence of the studies of a similar nature, as well as a possible framework and focus of the study.

The research tools contained the most suitable questions in line with the objectives of the study, thereby enhancing the reliability of the research instrument, simultaneously the increasing potential validity of the results of the study.

Each interview took a minimum of 30 minutes, providing a room for the provision of qualitative data. According to Guba (in Babbie and Mouton, 2001) qualitative accounts of respondents also enhances validity of a study.

3.9. Ethical Considerations

Babbie and Mouton (2001) mention that there are four ethical considerations that any researcher should focus on.

The first is informed consent, where the researcher should obtain the necessary permission from the respondents, after they have been thoroughly and truthfully informed about the purpose of the research.
The second is that the respondents should be assured of their right to their privacy.

Thirdly, the respondents should be given assurance that they will be indemnified against any physical and emotional harm, thus the protection from harm.

Finally, the fourth concern states that researchers should guard against manipulating respondents or treating them as objects or numbers, rather than individual human beings, which means they must not use unethical tactics and techniques.

Other ethical issues include the competency of the researcher in conducting a thorough review of literature, to ensure that the research has not already been investigated. Results should not be subjective because it might lead to unethical conduct.

Taking into account these factors, permission was sought and obtained from the respondents any data was collected. Respondents were also assured of their anonymity, in that they would not be identified at all. All ethical issues were observed constantly and if anybody requires further information from results permission will be sought from respondents prior to any data being released to other interested parties.

3.10. Limitations

Gribbin and Greenfield (2001) explains that the most important thing a researcher should remember to do in an interview is listening. Researchers should remember, too, that interviews are primarily a way to gather information, not a conversational exchange of views.

Sometimes a respondent may give a misleading impression, which may not necessarily be intentional. Gribbin and Greenfield (2001) identified three of these - ulterior motives; a desire to please the interviewer and idiosyncrasy.

Goddard and Melville (2001) state that a researcher has no right to expect total honesty. Their assertion further states that some participants will not overly care about an answer or will try to supply a socially correct answer.
3.11. Conclusion

In order to ensure that the research is scientific, a number of identified steps including the choice of a topic; definition of the problem; formation of a hypothesis; research design; data collection; analysis and interpretation need to be properly planned, followed and executed. The proper execution of the research exercise in terms of scientific research guidelines also ensures that there is no discrepancy between what is aspired and reality. This chapter supplies an overview of how research was accomplished, with justification for, and the manner in which, particular approaches have been taken as discussed in Chapter 1.
CHAPTER 4
PRESENTATION OF RESULTS

4.1. Introduction

This section will present the data that was collected through the face to face and structured interviews which were conducted with key respondents in relation to the focus of this study. The data from the interviews presented within this chapter seek to address the research problem and answer the research questions. The research problem is to date, more than 14 years after the LRA came into effect; no minimum service agreement has been ratified by the ESC (Brand, 2013). The main aim of the study is to investigate if employees of the State who are employed within the category of Essential Services have the right to strike?

This study seeks to answer the following main questions: What are the causes Essential Services Public Servants to go on strike? The study also has the following secondary research questions; what are the conditions under which Essential Public Servants may go on strike? What is the impact of essential employees’ strike on essential services? What recommendations can be made on the way forward to achieving a minimum service agreement between the employer and employees?

The results of the study are drawn from population of 60 respondents who are members of the PSCBC and also high level representatives from the two departments which offer essential services in South Africa. Through the use stratified purposive sampling, a sample of 10 respondents who are members of the PSCBC and 6 non-PSCBC respondents participated in the study. The 16 respondents represented both the labour union representatives and the government representatives. The interviews included the following respondents:

- Five (5) members from the Department of Health (DOH) of which 3 are PSCBC Council members and 2 which are not PSCBC Council members.
- Five (5) respondents from the South African Police Services (SAPS) of which 3 are PSCBC Council members and 2 which are not PSCBC Council members.
• Six (6) Trade Union representatives of the DOH and SAPS which make up the membership within the category of essential services.

Table 4.1. below depicts the breakdown of the respondents which is as follows:

Table 4.1: Category breakdown of the number of respondents

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Health (DOH)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSCBC Council Members</td>
<td>3</td>
<td>18.75%</td>
</tr>
<tr>
<td>PSCBC Non-Council members</td>
<td>2</td>
<td>12.50%</td>
</tr>
<tr>
<td>South African Police Services (SAPS)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSCBC Council Members</td>
<td>3</td>
<td>18.75%</td>
</tr>
<tr>
<td>PSCBC Non-Council members</td>
<td>2</td>
<td>12.50%</td>
</tr>
<tr>
<td>Trade Union Members</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>16</td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Figure 1: Illustrates Breakdown of Respondents per Organisation
The respondents are further broken down into the number of employees employed by the State and the number of employees employed by admitted Public Service Trade Unions:

**Table 4.2: Indicates a breakdown of the number of respondents- employer/trade union split**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees of the State</td>
<td>10</td>
<td>62.50%</td>
</tr>
<tr>
<td>Employees of Trade Unions</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**Figure 2: Illustrates Breakdown of State/Trade Union Employees**

The study involved 10 (62.50%) of the employees of the state and 6 (37.50%) of the trade union representatives from the two essential services category of public servants. The next section will present the results of the face-to-face interviews in detail.
4.2. Presentation of results: Face-to-face interviews

A sample of the structured interview schedule is attached to this document – labelled as Annexure A. The questionnaire is structured in a manner aims to address all of the research questions. This section will display the responses to all of the questions contained within the questionnaire. A total of 16 questions were posed to a total of 16 respondents. The interviewer conducted various face to face interviews within the employees workplaces to gauge a more appropriate response as the workplace is the employees natural settings. The interviews began with the interviewer introducing himself, stating the reasons for the interview and elaborating on the anonymity of the respondent. The questions were then addressed one at a time while the interviewer wrote down the responses. The responses are detailed below:

4.2.1. Question 1: Department/ Trade Union Name

Question 1 of the structured interview schedule was focused on the department or trade union where the respondents belonged to. The 16 respondents all responded to the question and table 4.3. depicts the responses below:

Table 4.3: Respondents’ organisation

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Department/ Trade Union Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Public Servants Association (PSA)</td>
</tr>
<tr>
<td>2</td>
<td>Democratic Nursing Organisation of South Africa (DENOSA)</td>
</tr>
<tr>
<td>3</td>
<td>National Education, Health and Allied Workers Union (NEHAWU)</td>
</tr>
<tr>
<td>4</td>
<td>Health &amp; Other Services Personnel Trade Union of South Africa (HOSPERSA)</td>
</tr>
<tr>
<td>5</td>
<td>South African Police Union (SAPU)</td>
</tr>
<tr>
<td>6</td>
<td>Police &amp; Prisons Civil Rights Union (POPCRU)</td>
</tr>
<tr>
<td>7</td>
<td>South African Police Service (SAPS)</td>
</tr>
<tr>
<td>8</td>
<td>South African Police Service (SAPS)</td>
</tr>
<tr>
<td>9</td>
<td>South African Police Service (SAPS)</td>
</tr>
<tr>
<td>10</td>
<td>South African Police Service (SAPS)</td>
</tr>
<tr>
<td>11</td>
<td>South African Police Service (SAPS)</td>
</tr>
</tbody>
</table>
As discussed earlier on in the introduction, the 16 respondents were from the state and labour unions representatives as indicated in table 4.3.

4.2.2. Question 2: Current Position

The second question focused on the current status of the respondents as the sample selected focused on key stakeholders and informants in essential services. Table 4.4 depicts the current position of the 16 respondents.

**Table 4.4: Respondents’ organizational position**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Department/Trade Union Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Chief Negotiator</td>
</tr>
<tr>
<td>2</td>
<td>Chief Negotiator</td>
</tr>
<tr>
<td>3</td>
<td>Negotiator</td>
</tr>
<tr>
<td>4</td>
<td>Researcher / Negotiator</td>
</tr>
<tr>
<td>5</td>
<td>Negotiator</td>
</tr>
<tr>
<td>6</td>
<td>Negotiator</td>
</tr>
<tr>
<td>7</td>
<td>Brigadier</td>
</tr>
<tr>
<td>8</td>
<td>Lieutenant Colonel</td>
</tr>
<tr>
<td>9</td>
<td>Brigadier</td>
</tr>
<tr>
<td>10</td>
<td>Brigadier</td>
</tr>
<tr>
<td>11</td>
<td>Lieutenant Colonel</td>
</tr>
<tr>
<td>12</td>
<td>Assistant Director</td>
</tr>
<tr>
<td>13</td>
<td>Deputy Director</td>
</tr>
<tr>
<td>14</td>
<td>Deputy Director</td>
</tr>
<tr>
<td>15</td>
<td>Director</td>
</tr>
<tr>
<td>16</td>
<td>Deputy Director</td>
</tr>
</tbody>
</table>
The following individuals were interviewed; 2 Chief Negotiators (11.76%), 3 Negotiators (17.65%), 1 Negotiator/ Researcher (5.88%), 3 Brigadiers (17.65%), 2 Lieutenant Colonel (11.76%), 3 Deputy Directors (17.65%) and 1 Assistant Director (5.88%). Table 4.5 summarises the number of respondents per position. It is also graphically illustrated in Figure 3 below.

**Table 4.5: Illustrating a summary per position**

<table>
<thead>
<tr>
<th>Position</th>
<th>Quantity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Negotiator</td>
<td>2</td>
<td>11.76%</td>
</tr>
<tr>
<td>Negotiator</td>
<td>3</td>
<td>17.65%</td>
</tr>
<tr>
<td>Negotiator/ Researcher</td>
<td>1</td>
<td>5.88%</td>
</tr>
<tr>
<td>Brigadier</td>
<td>3</td>
<td>17.65%</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>2</td>
<td>11.76%</td>
</tr>
<tr>
<td>Director</td>
<td>2</td>
<td>11.76%</td>
</tr>
<tr>
<td>Deputy Director</td>
<td>3</td>
<td>17.65%</td>
</tr>
<tr>
<td>Assistant Director</td>
<td>1</td>
<td>5.88%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**Figure 3: Illustrates a summary per position**
4.2.3. Question 3: Are you a Council member of the PSCBC (Yes/No)?

There were 12 Council Members (75%) and 4 non-members (25%) who partook in the interviews. This is illustrated in table 4.6. The breakdown of the positions is also graphically illustrated in figure 4 located below.

Table 4.6: Illustrating a summary per Council Member/ Non-member

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of respondents</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>75%</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td>25%</td>
</tr>
<tr>
<td>Total</td>
<td>16</td>
<td>100%</td>
</tr>
</tbody>
</table>

Figure 4: Illustrating a summary per Council Member/ Non-member

4.2.4. Question 4: The Constitution gives all South Africans the right to strike; do you have the right to strike (Y/N)?

Respondents were requested to comment on whether they have a right to strike as outlined in the Constitution of the Republic of South Africa. 10 of the respondents which constituted 62.5% of the total were of the opinion that it was their right to strike whilst 6 of the respondents (37.5%) were of the opinion that they did not have the right to strike. This is illustrated in table 4.7. It is also graphically illustrated in Figure 3 which is also located below.
Table 4.7: Respondents’ right to strike

<table>
<thead>
<tr>
<th>Yes/No</th>
<th>Quantity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>62.50%</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td>Total</td>
<td>16</td>
<td>100%</td>
</tr>
</tbody>
</table>

Figure 5: Illustrates a summary of the right to strike

4.2.5. Question 5: Substantiate you answer

The respondents were asked to substantiate their responses to question 4. All the 16 respondents responded to this question and their responses are illustrated in Table 4.8 below:

Table 4.8: Respondents’ substantiation to the right to strike

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Substantiation of answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In terms of the Constitution of the Republic of South Africa and the Labour Relations Act, it is a fundamental right to strike.</td>
</tr>
</tbody>
</table>
In terms of the Bill of Rights and the Constitution all workers have the right to strike. A strike is the last resort but the best way of pressuring an employer into agreeing to demands.

If you have exhausted all of you negotiations mechanisms the only recourse is to strike.

As contained in Section 23 of the Constitution, which must be read in conjunction with Section 64 of the LRA, it gives one the right to strike.

Essential services are provided to the citizens of the country and strike action is strictly prohibited.

The police are classified as essential services in terms of the Police Act and are not permitted to strike.

Police are prohibited from the right to strike.

The very same constitution that provides the right to strike also provides limitations in Section 35 of the constitution. It is not an absolute right and this is internationally recognised.

The duties and responsibilities of Police form part of essential services and Police should not be involved in labour unrest.

In terms of the constitution there is a right to strike but it is limited due to being a member of the SAPS. SAPS have been deemed as essential services to the LRA and by the Parliament of the RSA. Also extended by the SAPS Act to say; should you partake or conspire to partake it is deemed as misconduct and one could be dismissed from the service.

It is my constitutional right to strike however the strike must be a protected strike.

I have the right to strike however there are limitations in terms of the essential service regulations. This is dicy as essential services are the provision of health as a service.

I am a worker and have the right to apply my labour rights.

I am permitted to strike due to the LRA giving effect to the Constitution

I have the right to strike however it is limited. The current essential service designation when read in totality, the DOH (support and clinical) are essential services with no MSA. You therefore have no right to strike.
4.2.6. Question 6: In your opinion do you think essential service workers have the right to strike?

There were 6 respondents (37.5%) who agreed that essential public servants had the right to strike while 10 respondents (62.5%) were of the view that essential public servants do not have the right to strike. Table 4.11, 4.12 and figure 6 situated below illustrates this.

Table 4.9: Responses to whether essential service workers have the right to strike

<table>
<thead>
<tr>
<th>Yes/No</th>
<th>Quantity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>6</td>
<td>37.50%</td>
</tr>
<tr>
<td>No</td>
<td>10</td>
<td>62.50%</td>
</tr>
<tr>
<td>Total</td>
<td>16</td>
<td>100%</td>
</tr>
</tbody>
</table>

Figure 6 illustrates the summary on the questions whereby the respondents were asked as to whether essential service workers have a right to strike or not.

**Figure 6: Illustrates a summary on a vote on whether essential service workers have the right to strike**
4.2.7. Question 7: Substantiate your answer

This question is a follow up from question 6 were candidates were requested to substantiate on the issue of whether essential public servants had the right to strike or not. The respondents provided feedback as outlined in table 4.10 positioned below.

Table 4.10: Substantiation as to whether essential public servants have the right to strike or not.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Substantiate your answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In terms of the Labour Relations Act, essential services workers are not permitted to strike.</td>
</tr>
<tr>
<td>2</td>
<td>In terms of the above bills (Constitution of the Republic of South Africa, Bill of rights and the LRA, over and above these are employees that should be treated the same as any other employees. In terms of history, the employer only listens when employees embark on strike action. If essential services go on strike, then only will demands be met.</td>
</tr>
<tr>
<td>3</td>
<td>Equal rights for all workers. All subscribe to the same constitution.</td>
</tr>
<tr>
<td>4</td>
<td>They do have the right to strike however there is a “but” factor. The lives of other citizens are placed at risk.</td>
</tr>
<tr>
<td>5</td>
<td>In terms of the Constitution of the Republic of South Africa, they are permitted to strike but is not limited. In terms of the LRA Essential public servants may not strike</td>
</tr>
<tr>
<td>6</td>
<td>By virtue of the definition of essential services, it is prohibited as it is a matter of life and death.</td>
</tr>
<tr>
<td>7</td>
<td>The word “essential” emphasizes the importance of a service. In the event of services not being provided there will be a loss of lives and destruction of property however lives are of fundamental importance.</td>
</tr>
<tr>
<td>8</td>
<td>Strike action has led to the loss of lives and lives are precious.</td>
</tr>
<tr>
<td>9</td>
<td>The type of work that they are performing cannot be compromised to the detriment of the country. There must be an alternate mechanism</td>
</tr>
</tbody>
</table>
to channel their grievances/ demands.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Same as above, the duties of Police is to serve the public and to be in a position to serve at all times.</td>
</tr>
<tr>
<td>11</td>
<td>The constitution guarantees this and there is no law above the constitution but the constitution states no law is absolute hence the limitation of rights in terms of the constitution.</td>
</tr>
<tr>
<td>12</td>
<td>They provide essential services and people will suffer and there will be no care givers to patients.</td>
</tr>
<tr>
<td>13</td>
<td>No, not in health services. We cannot even apply ratios. Health as a service is in terms of a value chain. One service is not seen as being more important than the other. A cleaner in the ICU is equally important as a doctor; if a cleaner does not clean he will not be able to conduct his duties and therefore the importance.</td>
</tr>
<tr>
<td>14</td>
<td>Government must recognize essential services and provide skeleton staff when strikes take place. It is important for Government to consult with the Trade Unions</td>
</tr>
<tr>
<td>15</td>
<td>Essential service workers are prohibited to strike by the LRA however they have alternate mechanisms available to them other than striking e.g. Arbitrations</td>
</tr>
<tr>
<td>16</td>
<td>For this service (ES), this should be one service that should be barred from striking altogether because it’s like choosing who should live and who should not.</td>
</tr>
</tbody>
</table>

4.2.8. Question 8: **Under what conditions may essential services embark on strike action?**

Respondents were requested to comment on the above question, their responses are contained in table 4.11 found below.

**Table 4.11: Responses on conditions under which essential public servants may embark on strike action.**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Conditions - essential services strike</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>There are no conditions under which Essential Services should go on a strike</td>
</tr>
<tr>
<td>2</td>
<td>If there is a collective dispute whereby all other employees go on</td>
</tr>
<tr>
<td></td>
<td>strike on matters of mutual interest.</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>3</td>
<td>Ideally there should be a MSA. In most sectors there is no MSA. Strike is the last resort to pressure employer.</td>
</tr>
<tr>
<td>4</td>
<td>Example in a hospital if the employer does not provide all required equipment to provide quality service delivery then strike action is warranted. How can there be quality service delivery with substandard equipment.</td>
</tr>
<tr>
<td>5</td>
<td>Under a condition of service or a matter of mutual interest.</td>
</tr>
<tr>
<td>6</td>
<td>Under very extreme conditions when there is absolutely no option of arbitration or the Labour Court has failed and there is no solution.</td>
</tr>
<tr>
<td>7</td>
<td>Under no circumstances, lives are of high importance.</td>
</tr>
<tr>
<td>8</td>
<td>They are not allowed to strike under any circumstances</td>
</tr>
<tr>
<td>9</td>
<td>Under no circumstances.</td>
</tr>
<tr>
<td>10</td>
<td>Under no circumstances, they can’t strike, it should be against the law for Police to strike</td>
</tr>
<tr>
<td>11</td>
<td>If they want to exercise the right to strike then that right may be subjected to negotiations and regulate at what process can allow people to exercise the right to strike and including a MSA</td>
</tr>
<tr>
<td>12</td>
<td>They may do this during their lunch breaks and leave days.</td>
</tr>
<tr>
<td>13</td>
<td>As long as you do not have a MSA it is very difficult. Only when a department is fully staffed can you apply a ratio, at minimum what do I need to operate.</td>
</tr>
<tr>
<td>14</td>
<td>In the event of there being an agreement in place</td>
</tr>
<tr>
<td>15</td>
<td>Ideally essential service workers should never strike under any circumstances however if there is a MSA in place then they may be permitted to strike.</td>
</tr>
<tr>
<td>16</td>
<td>Only when a MSA is in place and under no other circumstances.</td>
</tr>
</tbody>
</table>

4.2.9. **Question 9:** Are you aware of any minimum services agreement (MSA) that permits essential public servants to embark on strike action (Y/N)?

In terms of this question, respondents were requested to comment on whether they are aware of any MSA that permits essential public servants to embark on strike action.
action. All the 16 respondents (100%) of the respondents were in agreement that there was no MSA in place that permitted essential public servants to strike.

4.2.10. **Question 10: Substantiate the above if yes**

This question is a follow up from question 9. The question was not applicable to any of the respondents as they all responded negatively to the above question. This is illustrated in the table that is contained below.

4.2.11. **Question 11: What are the repercussions for the employer of not having this agreement (MSA) in place?**

The respondents were requested to outline the repercussions of the employer not having a MSA in place. The feedback from the respondents is contained in table 4.15 below.

**Table 4.12: Responses regarding the repercussions of an employer not having a MSA.**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Repercussions of employer not having a MSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In the absence of an agreement not being in place, essential services workers may go on wildcat strikes and the consequences that are associated with Wild Cat Strikes can be unpleasant.</td>
</tr>
<tr>
<td>2</td>
<td>Wildcats strikes may occur, uncoordinated industrial action may result in anarchy. The employer may not be able to charge employees as there is no compensation for the acts as prescribed which proves to be a challenge. Difficult to charge people as it is a right.</td>
</tr>
<tr>
<td>3</td>
<td>Loss of production due to strike. Lack of service delivery, the MSA will regulate the process.</td>
</tr>
<tr>
<td>4</td>
<td>All employees will strike if there is no minimum services agreement in place.</td>
</tr>
<tr>
<td>5</td>
<td>The employer will be in no position to manage employees as there are no service level agreements with employees.</td>
</tr>
<tr>
<td>6</td>
<td>In the unfortunate event of one morning workers wake up and go on strike, there will be nobody to do the job, lives are compromised and</td>
</tr>
</tbody>
</table>
There may be loss of lives.

There are no repercussions as people are not permitted to go on strike. There must be a guarantee that the lives of people are protected.

The employer will have compromised its constitutional obligation. The trade unions will take advantage and draw people to strike.

The employer will not be able to determine the number of people in the workplace. With a MSA there can be a determination of the number of people in the workplace.

The impact on service delivery will be negative.

There will be the temptation of an employer to exercise their constitutional right, playing outside the perimeters of the law, e.g. Marikana.

All staff will go on strike. It also affects the strike as only a few people are able to demonstrate.

You always run the risk of having the entire staff compliment going on strike. There is no fallback position. You can go on strike but have to maintain the numbers to conduct key functions.

Wild cat strikes that we see. Some essential services suffer e.g medical services. Government must rethink this issue and put forward an agreement

The main danger for the employer is that essential services may embark on a strike; however my opinion is that this is a serious violation and is a result of being ill-disciplined. A MSA may be more beneficial to the employer due to the risk of unfavorable arbitration awards being issued.

People will go on strike on mass. They will seek refuge in their numbers. It will be difficult to distinguish the percentage of people on strike. The percentage of staff operating under less than ideal conditions cannot be determined.

### 4.2.12. Question 12: What are the repercussions for the employee of not having this agreement (MSA) in place?
The respondents were requested to outline the repercussions of the employee not having a MSA in place. The respondents’ feedback is contained in table 4.13 below.

**Table 4.13: Responses regarding the repercussions on employees for not having an MSA.**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Repercussions for employee not having an MSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>If essential service workers go on strike then the employee may be dismissed by the employer.</td>
</tr>
<tr>
<td>2</td>
<td>They cannot exercise their right to strike due to fear of dismissal.</td>
</tr>
<tr>
<td>3</td>
<td>Misconduct because it will give the employer the right to dismiss striking employees. Tension between employer and employee.</td>
</tr>
<tr>
<td>4</td>
<td>The employees will all be dismissed as they are not protected. The employer needs to go to the labour court to prohibit it.</td>
</tr>
<tr>
<td>5</td>
<td>The challenge is that there is nothing that is outlined by the employer in terms of what they are expected to deliver on.</td>
</tr>
<tr>
<td>6</td>
<td>They may be dismissed or lose their jobs.</td>
</tr>
<tr>
<td>7</td>
<td>Even those that are not rendering essential services, the right to strike by implication is affected and employees may not strike.</td>
</tr>
<tr>
<td>8</td>
<td>The employees may be dismissed unfairly. The process of reinstatement will be protected.</td>
</tr>
<tr>
<td>9</td>
<td>No implications, the right to strike can be exercised by all.</td>
</tr>
<tr>
<td>10</td>
<td>This is opposite of the Employer repercussion, employees will be lead to believe that they have the right to strike. We are all humans and have the right to strike.</td>
</tr>
<tr>
<td>11</td>
<td>Same as above as employees will demand and operate outside the provisions of the LRA e.g. employers by large decide to leave a union in the workplace and have lost confidence by union recognized by the employer and become unmanageable in the long run.</td>
</tr>
<tr>
<td>12</td>
<td>People will do as they please and take no responsibility. Employees need to consult with their relevant trade unions. It is important to belong to a top a union as they are in a position to give guidance and they have a better understanding of these issues.</td>
</tr>
<tr>
<td>13</td>
<td>Similar to the employer, if you work for health you end up breaking the law or services are terminated/ final written warning. Maybe you will</td>
</tr>
</tbody>
</table>
end up on the wrong side of the law.

14 For ourselves if there are no MSA, the Government can take disciplinary action or fire us or create an antagonist work environment, due to the fact that we strike they feel that we are undermining their authority. There is a lack of understanding on the part of Government.

15 This can be positive as there is no reason to forfeit their salary. In this case no control by the outcome of discipline, determined by arbitration. The arbitration award will determine the outcome.

16 The LRA states that employees should not strike unless there is a MSA, it follows that the employee will be dismissed as it is an unprotected strike.

4.2.13. Question 13: What is the impact to the beneficiaries of the services rendered if there is a strike?

The respondents were requested to sketch what the impact to beneficiaries of the services rendered if there is a strike. The respondents had the following to say – as outline in table 4.14 below:

**Table 4.14: Responses on the impact to the beneficiaries of service render in the event of a strike**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Impact to beneficiaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>They will not be able to access services that should be rendered by the state.</td>
</tr>
<tr>
<td>2</td>
<td>Health- people will be denied the right to health services as enshrined in the Constitution resulting in death and the outbreak of disease.</td>
</tr>
<tr>
<td>3</td>
<td>As in the past, when there is a strike in the hospital, the hospital is shut down resulting in death, spread of disease and spread of infection.</td>
</tr>
<tr>
<td>4</td>
<td>No services will be provided and lives are placed at risk.</td>
</tr>
<tr>
<td>5</td>
<td>The impact is that there will be no service and some of the essential needs for the citizens will not be provided.</td>
</tr>
<tr>
<td>6</td>
<td>There will be no service delivery and this will have a negative impact on the community.</td>
</tr>
</tbody>
</table>
Catastrophic e.g. current service delivery strikes, people are being killed and property is being damaged. Police are unable to respond because they want to use this as a bargaining tool.

The citizens become vulnerable as they will feel unsecure and lives will be lost and properties will be exposed to threat

This will have a negative impact. Essential services are not rendered and especially in some industries this can lead to death especially within the health and police services.

It will be a problem maintaining law and order within the Country. The police have to protect citizens in terms of the constitution.

There will be no service delivery; some might die in the process.

These impacts seriously on quality service delivery.

Very negative impact. History has shown that services come to a standstill and there is no service delivery.

Citizens are always in the line of fire and this is sad. This is viewed as a failure of Government. Citizens are denied access to service which results in illness, death and poor school results. This escalates poverty.

The health, life and safety of the community will be in danger.

It denies the right that is constitutionally guaranteed which is the right to health care.

4.2.14. Question 14: What is the impact to the employer when services are not rendered?

The respondents were requested to provide their opinion on the impact to the employer when services are not rendered. The respondents’ feedback is represented in table 4.15 below.

Table 4.15: Illustrating the impact to the employer when services are not rendered

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Impact to employer when services are not rendered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>There is a lack of service delivery to the public.</td>
</tr>
<tr>
<td>2</td>
<td>Negative publicity and multiple pressures. Government will not be</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>able to deliver on their social contract (service delivery)- political implications</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>It takes away confidence in the employer. There will be financial loss and people will have no faith in Government.</td>
</tr>
<tr>
<td>4</td>
<td>Citizens can sue the employer e.g. an operation or medical procedure may be done in a hap hazard manner and there will be further damage to the patients' health due to substandard treatment.</td>
</tr>
<tr>
<td>5</td>
<td>The employer will be in a compromised position as services will not be provided to citizens of the country.</td>
</tr>
<tr>
<td>6</td>
<td>The employer will not be able to service the community and this may lead to unrest and unstable communities.</td>
</tr>
<tr>
<td>7</td>
<td>Unhappy communities and lawlessness, loss of lives and criminality will be on the increase.</td>
</tr>
<tr>
<td>8</td>
<td>The employer will fail and the citizenry will lose faith and confidence in the employer.</td>
</tr>
<tr>
<td>9</td>
<td>In private companies there is a loss of income and in public institutions there is a lack of service delivery.</td>
</tr>
<tr>
<td>10</td>
<td>It will be perceived that the Police are not doing their job in terms of the Police Act.</td>
</tr>
<tr>
<td>11</td>
<td>Lose confidence by consistency.</td>
</tr>
<tr>
<td>12</td>
<td>They fail on their mandate to deliver services to the communities.</td>
</tr>
<tr>
<td>13</td>
<td>The employer has to render a service. Denies the employer to fulfil its mandate. If on strike - cannot fulfil duties and affects citizens.</td>
</tr>
<tr>
<td>14</td>
<td>If there is poor service delivery it continues to say that our services are not managed properly. Government will lose the support of its people. Top skilled persons will quit the organisation.</td>
</tr>
<tr>
<td>15</td>
<td>The impact will be similar as above as the health, life, safety of the clients being the citizenry of the service provider.</td>
</tr>
<tr>
<td>16</td>
<td>Failing in their duties to meet their constitutional obligations.</td>
</tr>
</tbody>
</table>

4.2.15. Question 15: As essential services personnel what is the impact to you personally if there is a strike?
With this question a personal opinion was requested from respondents. The respondents were requested to outline the repercussions on them personally if there is a strike. The respondents' feedback is outlined in Table 4.20 below.

**Table 4.16: Illustrating the repercussions as an essential public servant, the personal impact**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Personal impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lack of support to function effectively in the workplace. E.g. if there is a doctor conducting an operation/medical procedure and there is no cleaner to assist with the cleaning, there will be a high impact.</td>
</tr>
<tr>
<td>2</td>
<td>Loss of income. Impact on family life, in 2007 members went on strike; family members were ill and nobody to assist them. No medical aid and seek medical assistance.</td>
</tr>
<tr>
<td>3</td>
<td>No work, no pay principle. Health professional’s oath is compromised as I am a registered health practitioner with the Health Council of South Africa. License may be revoked.</td>
</tr>
<tr>
<td>4</td>
<td>Loss of benefits and salaries.</td>
</tr>
<tr>
<td>5</td>
<td>No work, no pay principle</td>
</tr>
<tr>
<td>6</td>
<td>There is no access to vital services such as health care, police and other emergency services.</td>
</tr>
<tr>
<td>7</td>
<td>I have to work long hours and the likelihood that if my family needs assistance, I will not be able to help due to the stress of strike; I will be unable to meet these requirements.</td>
</tr>
<tr>
<td>8</td>
<td>There should be a law prohibiting strike action. I will always be double minded if the process is either fair or unfair.</td>
</tr>
<tr>
<td>9</td>
<td>There are divisions created between employees as some of them feel that the needs of the society weights more than the individual. This also creates workplace friction- strikes and non-strikes.</td>
</tr>
<tr>
<td>10</td>
<td>I will not be able to do my job effectively as there will be additional work to do which is a work and financial burden.</td>
</tr>
<tr>
<td>11</td>
<td>No work, no pay. Misconduct and may be dismissed and lose my job.</td>
</tr>
<tr>
<td>12</td>
<td>The no work no pay principle applies.</td>
</tr>
<tr>
<td>13</td>
<td>Lack of access to services and prevalent danger, you could be denied essential and lifesaving services resulting in fatalities.</td>
</tr>
</tbody>
</table>
This has a grave impact as I think and worry about the community as I care for the community. It is demoralizing to go to work and there should be skeleton staff. It is a dilemma as there is too much work pressure.

I will run the risk of being dismissed and losing my job.

I will be in a conflict situation. You want to go on strike as a worker but there are ethical considerations which are a duty to serve e.g. nurses pledge service to humanity but not conducive to the prevailing conditions.

4.2.16. Question 16: What recommendations can you make towards achieving a Minimum services agreement?

This question is amongst one of the most important questions contained in the questionnaire. Respondents were requested to provide their opinion of what recommendations they could make towards achieving a MSA. The respondents had the following to say (as contained in table 4.17 below).

Table 4.17: Recommendations by candidates on attaining a MSA

<table>
<thead>
<tr>
<th>Respondent</th>
<th>MSA recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Both parties, the state and the trade unions need to come up with a reasonable percentage of the workforce that will be able to operate during the strike and the percentage of workers that are permitted to strike also needs to be determined.</td>
</tr>
<tr>
<td>2</td>
<td>The employer and labour need to sit down and develop terms of reference so that they can have a way of agreeing. The bill of rights needs to be balanced with the rights of essential services employees i.e. health to communities.</td>
</tr>
<tr>
<td>3</td>
<td>Allow parties to engage and to sit down and determine skeleton staff requirements. No blanket rules. Each health care facility should be analysed on an individual basis.</td>
</tr>
<tr>
<td>4</td>
<td>Employer and labour must negotiate as to the number of people that may go on strike and those that have to remain. The risk is who is prepared to go on strike and risk the loss of a salary.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5</td>
<td>The employer and the employee must agree on the level of minimum services to determine the level of service that needs to be provided. The number of people that need to go on strike in order to meet organizational requirements needs to be established.</td>
</tr>
<tr>
<td>6</td>
<td>Both the employer and employee must sit together and put the needs of the citizenry first and come to an amicable agreement.</td>
</tr>
<tr>
<td>7</td>
<td>From the employers point of view I would prefer to do without an agreement. Maybe the issue of percentage may be negotiated. Talk through specifics e.g. 10111 may never go on strike. Each environment must be individually analyzed.</td>
</tr>
<tr>
<td>8</td>
<td>The only thing is that parties need to sit and conclude an agreement. There should be benchmarking with global comparisons and try not to neglect the duties that the employer has to render.</td>
</tr>
<tr>
<td>9</td>
<td>Make it compulsory for parties to meet under the auspices of the essential services committee as the negotiations within a bargaining council takes too long and is open ended. Third party interventions are required to facilitate/ enforce an agreement.</td>
</tr>
<tr>
<td>10</td>
<td>There needs to be a balance if there is a right to strike agreement, a certain percentage of employees need to be excluded from the strike process. Some essential services are more “essential” than others.</td>
</tr>
<tr>
<td>11</td>
<td>To engage with social partners and all involved and develop standard operational procedures, determine number of employees that should participate. All times prioritize service delivery. Develop a collective agreement.</td>
</tr>
<tr>
<td>12</td>
<td>The trade unions and the employer need to engage and give each other time to consult with their members. Both the employer and trade unions must negotiate in good faith and must keep the well-being of the citizens at heart.</td>
</tr>
<tr>
<td>13</td>
<td>Full staff compliment, all vacancies filled, knowledge and understanding of workload, understanding of diseases, burdens and patterns. Parties may agree if they understand all of the above conditions.</td>
</tr>
<tr>
<td>14</td>
<td>Government needs to give this more attention. NEDLAC needs to apply their minds and focus on this issue. This must be given urgency</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>15</td>
<td>The minimum services agreed upon must be balanced and not favor any party. The parties must abide to the agreement.</td>
</tr>
<tr>
<td>16</td>
<td>A benchmarking exercise must be undertaken. The facilities must be assessed and an HR audit must be conducted. Our of these processes comes a workable arrangement however prospects are dim. Interest arbitration is necessary as parties are unable to attain this on their own. This process is going way to slowly. If a media review on what people are saying maybe this needs to be taken into consideration and we will look at the process in different light. The ANC and DOL have conducted an analysis of strikes and found that workers never recover from strikes.</td>
</tr>
</tbody>
</table>

### 4.3. Conclusion

In this chapter, various questions were drafted and used in gathering the data which is related to the right of essential public servants to strike. The respondents gave information based on their perceived view and understanding of the questions that were contained in the questionnaire. The results pertaining to the survey questionnaire were presented in a form of tables and graphs followed by explanatory narrative. This will be the basis for discussion and interpretation in Chapter 5, from which key findings are used for the recommendations that will be made in the final Chapter 6 of this research document.
CHAPTER 5
DATA ANALYSIS

5.1. Introduction

This chapter discusses the findings presented in chapter 4. The results from the interviews are interpreted and analyzed in line with the objectives of the overall study. These issues that are identified through the triangulation process will be contained in this chapter; these include the literature reviewed and empirical research findings from the interviews conducted by the researcher.

5.2. Demographic data

Respondents were chosen from both National Government Departments and recognized Public Service Trade Unions; this is in accordance with table 4.3. These government departments and trade unions operate within the perimeters of the provision of essential services. They include security and health personnel. Educator departments and educator trade unions have been excluded from this study as education does not fall within the scope of essential services.

The respondents included high level key stakeholder in the PSCBC and also high level stakeholders who are not members of the PSCBC in order to balance the opinions of either party as indicated in table 4.6. The inclusion of both parties contributes to the validity and reliability study as the right to strike concerns both parties. This enhances the validity of the study and the data collected.

According to the data collected, the opinions of both the PSCBC members and the non-members were the same in terms of their responses to the issues related to the essential service workers’ strikes.

5.3. Analysis of data collected from the face to face interviews

The analysis for this section will start with question 4 from the interview schedule and the discussion follows below.
5.3.1. Question 4: The Constitution gives all South Africans the right to strike; do you have the right to strike (Y/N)?

Respondents were requested to comment on their right to strike in terms of Section 23 of the Constitution of the Republic of South Africa; Labour relations; *everyone has the right to fair labour practices, every worker has the right to form and join a trade union, to participate in the activities and programmes of a trade union; and to strike* (South Africa, 1996).

The findings as depicted in table 4.7 indicate that the majority of the respondents are of the opinion that it was their fundamental right to strike in terms of the Constitution of the Republic of South Africa. There was however a high number of respondents who replied that they did not have the right to strike and this indicate a high level of mixed feelings. This is an indicator that the PSCBC has to seriously explore the formalisation of the Minimum Service Agreement or the regulation of the right to strike from the perspective of essential public servants.

It is the opinion of the researcher that eventually essential public servants will grow exhausted of waiting boundlessly for an agreement as disagreement is a sign of discontent.

The question was a simple yes/ no answer and the reasons for the respondents having the right to strike is further elaborated in terms of the next question where respondents were required to justify their answers.

5.3.2 Question 5: Substantiate you answer

All the respondents agreed on the fact that the Constitution gives them the right to strike, but it is not absolute right. In terms of the data that is contained in table 4.8, it is evident that respondents reacted with mixed feelings as some were adamant that it was their fundamental right to strike, some felt that they did not have the right to strike and some said that it was their right to strike provided certain conditions were met.
As indicated in Chapter 2, the right to strike is also given effect to in chapter IV of the South African Labour Relations Act 66 of 1995 (LRA). The fundamental right was due to the fact that protection was offered to them in terms of the constitution, the Labour Relations Act and the Bill of Rights. However respondents responded without a doubt in their mind that essential public servants may not strike as they are involved in policing and health which made them exempt from partaking in strike activities. The conditions for essential public servants partaking in a strike included the strike being a protected strike. Strikes were also viewed as a last resort once all other negotiations mechanisms to prevent a strike have failed and the best way of pressurizing an employer into agreeing to labour demands and employee grievances. There were mixed interpretations on the LRA, while there were some sections that permitted strike activity, essential services were not permitted to engage in strikes.

Overall, there are a mix of emotions and responses, which implies confusion and despair on the part of the essential services workers which could lead to demotivation. They could come to work, but not give off their best because of the prevailing situation.

5.3.3. Question 6: In your opinion do you think essential service workers have the right to strike?

The literature review alludes to the fact that an individual cannot be denied the right to strike within the ambits of the law. Emerging from the interview findings was that majority of the respondents were in agreement that essential public servants do not have the right to strike. However there was a feeling by 37.5% that indicated that they indeed have the right to strike as indicated in table 4.7. Overall there was a mix of responses which indicate a high level of confusion and uncertainty. These answers are further clarified in the next question as respondents were requested to elaborate on the essential service workers having the right to strike.

5.3.4. Question 7: Substantiate you answer

The general feedback that was received indicates that essential public servants should be treated in the same way as all other workers are treated and are protected in terms of the following legislation, the Constitution of the Republic of South Africa,
Bill of Rights and the Labour Relations Act. According to table 4.8, the respondents were of the opinion that “Equal rights for all workers” should be enjoyed. It was also reflected that the only way for the employer to meet the demands of labour would be for employees to engage in strike action.

On the contrary, some respondents were of the opinion that workers engaged in the provision of essential services were exempt for engaging in strike action under any circumstances as there will be loss of lives if these workers go on strike. The importance of the provision of police and health services was emphasized and these services were deemed as being a matter of life and death. Ratios may not even be applied to permit a certain percentage of workers to strike as the importance of all workers was deemed as equally important.

From the interviews it is evident the essential service workers are caught up in conflicting emotions which battle between exercising their own fundamental right and performing their duties and responsibilities. It is therefore a difficult corner which is equally uncomfortable and hence the minimum service agreement should be concluded as soon as possible as this is a ticking time bomb and might demotivate the essential services employees because strikes are a way that employees can break a deadlock and an impasse in negotiations. So without such a right, employees can end up demotivated to work in an environment whereby their rights are not recognized by the employer.

5.3.5. Question 8: Under what conditions may essential services embark on strike action?

The literature indicates that essential public servants may engage in strike action if there is a minimum service agreement (MSA) in place (PSCBC, 2014). The majority of the respondents were of the opinion that essential public servants may not go on strike under any conditions as indicated in table 4.11. There were also many respondents who indicated that essential public servants may engage in strike action if a MSA is established for the Public Service. Other conditions under which essential public servants may strike included; if the matter is a collective dispute and relates to a mutual dispute, if there is a lack of equipment and an employee cannot perform his/her duties and responsibilities efficiently and effectively, during break times and
under extreme conditions such as when there is no option of arbitration or the Labour Court has failed and there is no solution. The most favored response however was that there should be an MSA so that essential workers can exercise their right to strike.

5.3.6. Question 9: Are you aware of any minimum services agreement (MSA) that permits essential public servants to embark on strike action (Y/N)?

The literature indicates that there is no MSA for the public service and all respondents were in agreement that there is no MSA that they are aware of. This question enjoyed a 100% response rate towards there being no agreement.

5.3.7. Question 10: Substantiate the above if yes

This question is a follow up to question 9 and due to the fact that the above literature and response were in agreement, this did not warrant a further response. All respondents were in agreement that no substantiation is required and provided the “not applicable” response to this question.

5.3.8: Question 11: What are the repercussions for the employer of not having this agreement (MSA) in place?

The literature indicates that the Essential Services Committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service, in which case, the agreed minimum services are to be regarded as an essential service in respect of the employer and its employees (PSCBC, 2014). In this question we explore the impact for the employer and in the next question we explore the impact for the employee of not having this MSA in place.

The most common response was that employees will engage in wildcat strikes and some of the common outcomes will include the loss of lives, lack of service delivery, trade unions will take advantage of the situation and draw people to strike. People will go on strike in masses, they will seek refuge in their numbers and it will be
difficult to determine the percentage of workers on strike. There will be temptation for the employer to exercise their constitutional right which will involve playing outside the perimeters of the law. The responses are clearly depicted in table 4.12.

The absence of the agreement leaves the door open for the employees to strike. The question remains, for how long do this workers have to care and worry about the lives of others whilst their own rights are not taken care of?

5.3.9: Question 12: What are the repercussions for the employees of not having this agreement (MSA) in place?

There was a strong feeling from the respondents that if employees engage in strike action then they will be discriminated against by the employer and face disciplinary action and also possible dismissal. This will lead to tension between employees and the employer. Table 4.13 has tabulated the responses for this question clearly.

According to the researcher, if there is no MSA in place, an employee will not understand fully what is expected of him/her and what their expectations in terms of delivery are; they may even believe that it is their right to strike in the absence of a MSA. The LRA states that employees should not strike unless there is a MSA; it follows that the employee will be dismissed as it is an unprotected strike. In the event of a strike, there will be lawlessness, employees will do as they please and will take no responsibility for their actions.

It is important for employees to belong to trade unions and to consult with their trade unions on these issues as they have a better understanding of labour related matters. On the other hand this can be viewed as positive as there is no reason for an employee to forfeit their salary and in this case the control of the discipline will be arbitration and the arbitration award will determine the outcome.

From the above, it is evident that due to employees having to face legal challenges and possible dismissal if they strike, they cannot exercise their right to strike. This is extremely demotivating for an employee. The consequence is that employees could report to work just to “show a face,” but are not dedicated to the cause.
5.3.10: Question 13: What is the impact to the beneficiaries of the services rendered if there is a strike?

This question explores the impact to the citizens if there is a strike within the ambits of essential services. The respondents indicated in table 4.14 that there will be a lack or no service delivery which will have a negative impact on the community. People will be denied their right to health care services as enshrined in the Constitution resulting in death and the outbreak of disease. This will also be catastrophic for the role that police play in society as lack of service delivery within the police sector will result in people being killed and property being damaged. There will be no law and order in the country. Government will be perceived as a failure and this will result in poverty in the broader sense.

Overall, the health, life and safety of communities will be in danger, essential service workers therefore have to sacrifice their personal needs and focus on their jobs and this is viewed as demotivating.

5.3.11. Question 14: What is the impact to the employer when services are not rendered?

The respondents mentioned that the government will not be able to deliver on its social contract which is to provide quality service delivery to the citizens, there will be negative publicity and multiple pressures. This will result in financial losses and people will lose faith in the government. There may be legal claims against the State for the lack of service delivery which may result in injury of death. The community in turn will be unhappy, there will be lawlessness resulting in increased criminality. Skilled workers may be forced to seek alternate employment resulting in a “brain drain” for the Government. The responses to this question are tabulated in table 4.15.

In 2007 and 2010 there were strikes within essential services because employees were tired and frustrated of working endlessly with their rights being infringed upon. For how long can this continue?
5.3.12. Question 15: As essential services personnel what is the impact to you personally if there is a strike?

Most of the respondents as per the responses in table 4.16 showed concern in terms of the “no work, no pay” principle. The impact will be dire as there will be loss of income and the related problems that accompany the loss of income e.g. impact on family life, unable to pay bills, property being repossessed. There is also a lack of access to public facilities and healthcare.

Some employees have to work long hours to compensate for there being a lack of staff in the workplace and have to “double up” to meet operational requirements. There is also the issue of the conscience as health practitioners have to take the relevant oaths to protect the lives of people and this is jeopardized as ones license to practice within the health sector will be revoked. Workplace friction becomes prevalent due to some workers engaging in strike action and some not. Some workers feel that the needs of society outweigh their personal needs. There are workers that care deeply for the community in which they operate which creates a dilemma of not being able to perform. Workers suffer emotional trauma as there is a fear of losing your job.

The situation can be demotivating unless there are other incentives given to the essential service workers because they are denied their right to strike and air their grievances.

5.3.13. Question 16: What recommendations can you make towards achieving a Minimum services agreement?

Table 4.7 has depicted a number of recommendations which were made by the respondents in terms of attaining a MSA.

Both of the Parties to the Council need to negotiate a MSA and develop terms of reference so that they can determine a way of determining a mutually binding agreement. A reasonable percentage of the workforce that will be able to operate during the strike and the percentage of workers that that will be permitted to strike needs to be determined, specifics needs to be addressed e.g. 10111 (SAPS
emergency call center) may never go on strike. It is important to note that some services may be viewed as more “essential” than others.

There is a need to balance the Bill of Rights with the rights of essential service workers. There should be no blanket rules; each health care facility should be addressed on an individual basis. The needs of the citizenry need to be taken into account when determining this agreement. There was also a view that it should be made compulsory for parties to meet under the auspices of the Essential Services Committee as the negotiations with the Bargaining Council takes too long and is open ended, therefore third party interventions are required to facilitate / enforce an agreement.

Interest Arbitrations may be required as parties cannot agree on their own as this process of concluding an agreement is taking too much of time. A media review must be taken into consideration on what other authors have to contribute to the subject e.g. the African National Congress (ANC) and Department of Labour have conducted an analysis of strikes and found that workers never recover from strikes. NEDLAC must also be involved in the attaining of an agreement.

There should be a global benchmarking exercise to gauge international views on the matter. Both the state as the employer and the admitted trade unions must negotiate in good faith and have the well-being of the citizens at heart. All vacancies must be filled and organizations must operate with full staff compliments, understanding of workload, diseases, burdens and patterns must be understood. A full human resource audit must be conducted in each institution.

5.4. Conclusion

This chapter discussed the presentation of the findings in respect of the right of essential public servants to strike and has brought into sharp focus the opinions of the respondents. From the information gathered it is evident that essential public servants have the right to strike provided certain conditions are met. One of the glaring conditions is the need for the conclusion of a Minimum Service Agreement to be in place. This agreement will spell out requirements for both an employee and the
employer in the event of an essential public service strike. There will also be a fine balance whereby the workers needs are addressed while satisfying the needs of the Citizenry of the Country.
CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

This chapter is presented in order to provide a conclusive overview of the right of essential public servants to strike. Based on the results and findings of the research, Chapter 6 aims to provide a summary of the research objectives, followed by the conclusions drawn from the discussions presented in chapter 5. Recommendations are made and finally topics for future research are suggested.

6.2. Summary of Research Objectives

The study utilized face to face interviews with key respondents from three categories, namely: 5 essential services personnel who are members of the PSCBC; 5 essential services personnel who are not members of the PSCBC and 5 members of various trade unions who represent essential services. The primary objective of the study is to investigate if employees of the State who are employed within the category of Essential Services have the right to strike. The secondary objectives of the research are as follows: to determine the conditions required for these employees to go on strike, to evaluate the impact of essential employees’ strike on essential services and to make recommendations on the way forward toward achieving a Minimum Service agreement.

6.3. Conclusions and recommendations

6.3.1 The Right of essential public service workers to strike

According to the literature reviewed and the results of the empirical data collected, the study recognizes that it is both the fundamental and constitutional right of all employees to strike. Both National and International laws allude to the freedom of association and the right of all employees to strike. It should be further noted that even though public service workers have the right to strike, essential public service workers may be permitted to strike only if certain conditions are met and under no other circumstances.
6.3.2. The conditions under which essential public servants may strike

The employees of the state as well as the state as the employer both suffer equally in the event of an essential public servant strike. The employer is unable to satisfy the wants and needs of the citizenry causing a breakdown of the citizenry’s faith in Government as services are not rendered. The employees equally suffer as they have to endure a loss in income, job instability and may be dismissed due to being on the wrong side of the law.

The research therefore recommends that a Minimum Service Agreement be concluded in order for essential public servants to engage in strike activities. The agreement will outline both the duties and responsibilities of the state as the employer and employees of the state in order to protect their respective interests and provide a quality service to the citizenry of the country.

6.3.3. The impact of essential employees strike on essential services

The citizens of the country have the right to quality service delivery however when there is a strike within the essential services category, it is the citizens that suffer. Basic health services are not rendered, sickness and diseases are not controlled and crime increases as criminals roam freely.

Due to lack of employees on duty, the state is unable to provide the citizens with basic service delivery. The recommendation further alludes to the fact that a MSA must be in place to determine the number of employees that have to be working in a point of time to provide this quality service delivery.

6.3.4. Recommendations made towards the achievement of a Minimum Service Agreement (MSA):

- There is a sense of urgency to establish a MSA in order to protect both the rights of the employer and the employees in as far as the right to strike is concerned.
• Both parties to the Public Service Co-ordinating Bargaining Council (PSCBC), the State as the Employer and the admitted trade Unions need to agree to be committed to the process of attaining an MSA.

• Terms of reference must be established in order to determine a way of attaining a mutually binding agreement.

• No blanket rules should be applied e.g. 50% of workers are not permitted to strike, this is due to the fact that all institutions operate on a different level and a satellite health may only have 2 staff and if the 50% rule applies then one person may not be able to meet the operational requirements. Each department must therefore be analysed on individual basis to determine the percentage of workers that may be permitted to strike.

• Other institutions such as Municipalities, Eskom and other essential service organisations must be approached to evaluate MSA if they have them in effect. NEDLAC may be consulted to assist with the matter.

• There may be a need to lock parties into compulsory negotiations under the auspices of the Essential Services Committee as the negotiations within the PSCBC takes too long and it is open ended and therefore third party interventions are required to enforce an agreement.

• Interest Arbitrations may be required as parties cannot agree on their own mechanisms to conclude a MSA.

• Further international benchmarking exercises need to be conducted to gauge how other countries deal with strikes within their essential services.

• A media/ literature review must be conducted in order to analyse what authors on the subject have to comment on the attaining of a MSA.

• Both the state and the admitted trade unions must negotiate in good faith and have the well-being of the citizens at heart.

6.4. Suggestions for further research

It has come to the attention of the researcher while conducting this research exercise that the following areas need further attention:

• The PSCBC need conduct a risk assessment to determine the impact of an essential services strike; this will help mitigate risk in the event of essential public service strikes.
There was an indication from the respondents that departments are not operating with a full staff compliment, there needs to be research conducted in order to determine the operational capacity of a department/ departments which is not fully staffed.

Job satisfaction was a major problem in departments, there were civil servants who were despondent about their jobs, and further research needs to be conducted to gauge the satisfaction of employees in departments and what can be done to optimise job satisfaction.

An investigation needs to be conducted to check if state employees are aware of the duties and responsibilities of public sector bargaining councils.

The issue of authenticity of public servants needs to be explored, are public servants authentic when they carry out their duties and responsibilities.

If a public servant is in a limbo as to be bound by his/ her conscious to perform his fiduciary duty which is to provide services to the citizenry or to strike to protect his/ her own interest, which path will he/she choose?

6.5. Conclusion

It is the intent of the researcher to make a positive contribution towards the field of labour relations in particular dispute management and collective bargaining within the sphere of the public service. This research document strikes to assist the parties to the PSCBC to reach a collective agreement on Minimum Services. It is imperative to conclude an agreement of this nature. In the absence of such an agreement the impact will be dire if there is an unfortunate event of a public service strike. The researcher has grave confidence in the parties to the council and believes that they will be able to achieve the momentous task of attaining this agreement. This will be a radical jump towards the provision of quality service delivery to the citizenry of the country who so frequently become the punching bags of society and are denied the right to quality service delivery.
BIBLIOGRAPHY


ANNEXURE A – RESEARCH INTERVIEW SCHEDULE

Dear Respondent

My name is Oomang Parag, currently studying for a Masters of Business Administration (MBA) degree through Regenesys Business School. Part of my studies involves conducting research or writing a mini dissertation on any topic of my choice in order to fully qualify for the degree. It is for this purpose that I am conducting research on the following topic:

“An Investigation into the Right of Essential Public Servants to Strike”.

The main aim of the study is:
To investigate if employees of the State who are employed within the category of Essential Services have the right to strike?

The Objectives of the study are:
- To assess the conditions required for these employees to go on strike.
- To evaluate the impact of essential employees’ strike on essential services.
- To make recommendations on the way forward toward achieving a Minimum Service agreement.

I hereby kindly request your assistance in completing the questionnaire below.

Please be advised that the information provided in this questionnaire/ interview will be solely used for this the purposes of this study. You are also advised that participating in this study is voluntary and should you feel not comfortable with the questions, you may withdraw from the study at any time. Finally, no names of participants are required as part of the study and confidentiality of any information divulged is of utmost importance.
DEMOGRAPHIC INFORMATION

1. Department/ Trade Union Name:

2. Current Position:

3. Are you a Council Member of the PSCBC (Y/N)?

OBJECTIVE 1:
To investigate if employees of the State who are employed within the category of Essential Services have the right to strike?

1. The Constitution gives all South Africans the right to strike; do you have the right to strike (Y/N)?

2. Substantiate your answer

3. In your opinion do you think essential service workers have the right to strike?

4. Substantiate your answer:

Objective 2:
To assess the conditions required for these employees to go on strike.

5. Under what conditions may essential services embark on strike action
6. Are you aware of any minimum services agreement (MSA) that permits essential public servants to embark on strike action (Y/N)?

7. Substantiate the above if yes

8. What are the repercussions for the employer of not having this agreement (MSA) in place

9. What are the repercussions for the employee of not having this agreement (MSA) in place
Objectives 3:
To evaluate the impact of essential employees’ strike on essential services.

10. What is the impact to the beneficiaries of the services rendered if there is a strike?

11. What is the impact to the employer when services are not rendered?

12. As essential services personnel what is the impact to you personally if there is a strike.

Objective 4:
To make recommendations on the way forward towards achieving a Minimum Service agreement.

13. What recommendations can you make towards achieving a Minimum services agreement?
STUDENT DECLARATION OF RESPONSIBILITY

RESEARCH FOR THE PURPOSE OF:
MASTER OF BUSINESS ADMINISTRATION
OR MASTER OF PUBLIC MANAGEMENT DEGREE

Date Issued: January 2013  Version #2

1. I hereby declare that I am cognizant of the goals of research ethics to:
   a. develop among students and researchers a high standard of ethics and ethical practice in the conceptualisation and conduct of business research;
   b. cultivate an ethical consciousness among scholars especially in research involving human respondents; and
   c. promote among researchers a respect for the human rights and dignity of human respondents in the research process.

2. I subscribe to the principles of:
   a. voluntary participation in research, implying that the participants might withdraw from the research at any time.
   b. informed consent, meaning that research participants must at all times be fully informed about the research process and purposes, and must give consent to their participation in the research.
   c. safety in participation; put differently, that the human respondents should not be placed at risk or harm of any kind.
   d. privacy, meaning that the confidentiality and anonymity of human respondents should be protected at all times.
   e. trust, which implies that human respondents will not be respondent to any acts of deception or betrayal in the research process or its published outcomes.

3. I understand that plagiarism entails and I am aware of the Regenesys’ policy in this regard. I undertake to properly reference all sources used for research purposes. I undertake not to make use of another student’s previous work and to submit it as my own. I also undertake not to allow anyone to copy my work with the intention of using it as their own work.

4. I understand that the data collected in the course of my studies becomes the property of Regenesys Management and I undertake to transfer all raw data and documents related to my research to my supervisor for safekeeping.

Signature of student:

Date: 29-08-14

Signature of supervisor/academic head:

Date:

This document has been adapted from the requirements of the Research Ethics Committee of the University of Pretoria.
19th August 2014

RE: PERMISSION TO CONDUCT RESEARCH

To Whom it May Concern

This letter serves to confirm that Mr Oomang Parag, Student #Reg178742, ID # 7104123240386 is currently registered for a Master of Business Administration (MBA) Degree with Regenesys Business School, Sandton.

As part of the required academic rigour and the Council on Higher Education (CHE)’s guidelines on good practice, our students are required to do practical research. We would appreciate your company/department’s willingness to assist with the research process, by way of, interviews, personal interviews, questionnaires and/or the provision of relevant company information related to the research being undertaken.

Title of study: An Investigation Into the Right of Essential Public Servants to Strike.

It is noted that our students are made aware of and should abide by ethical considerations in the research process. Furthermore, our students are subject to the constraints of the Regenesys Student’s Disciplinary Code.

Please contact me if you require further information in this regard.

Yours Faithfully,

Ms Angela Vogt
Director & Registrar
Tel: 011 609 5000
angela@regenesys.co.za

cc: Mr Labogang Kamoeti; Director & Head of Research

[Signature]

1. Name: T.J. de Bruin
   (Designation e.g. CEO or NED)

2. Company/Department: PSCBC
   hereby grant Mr Oomang Parag permission to conduct research as outlined above.

Special conditions, if any:

Signed: [Signature]
Date: [Date]

Regenesys Management (Pty) Ltd
6 Sylvan Road, Sandton, Johannesburg
Postal Box 271, Sandton City, 2146
Web: www.regenesys.co.za Email: info@regenesys.co.za
Sambond: 011 609 5000; Fax: 011 609 5001
To whom it may concern

Dear Sir / Maam

**RE: O PARAG ASSISTANCE WITH INFORMATION: "AN INVESTIGATION INTO THE RIGHT OF ESSENTIAL PUBLIC SERVANTS TO STRIKE"**

Please note that Mr. Oomang Parag of the PSCBC is currently studying towards a Master of Business Administration Degree, the final aspect of the Degree entails compiling a mini dissertation based on the above subject.

The main aim of the study is:
To investigate if employees of the State who are employed within the category of Essential Services have the right to strike?

The Objectives of the study are:
- To assess the conditions required for these employees to go on strike.
- To evaluate the impact of essential employees' strike on essential services.
- To make recommendations on the way forward toward achieving a Minimum Service agreement.

You are kindly requested to assist by providing Mr. Parag with the requested information as outlined in the attached questionnaire.

Your co-operation will be highly appreciated.

[Signature]

Mr. F. J. De Brain
General Secretary: PSCBC